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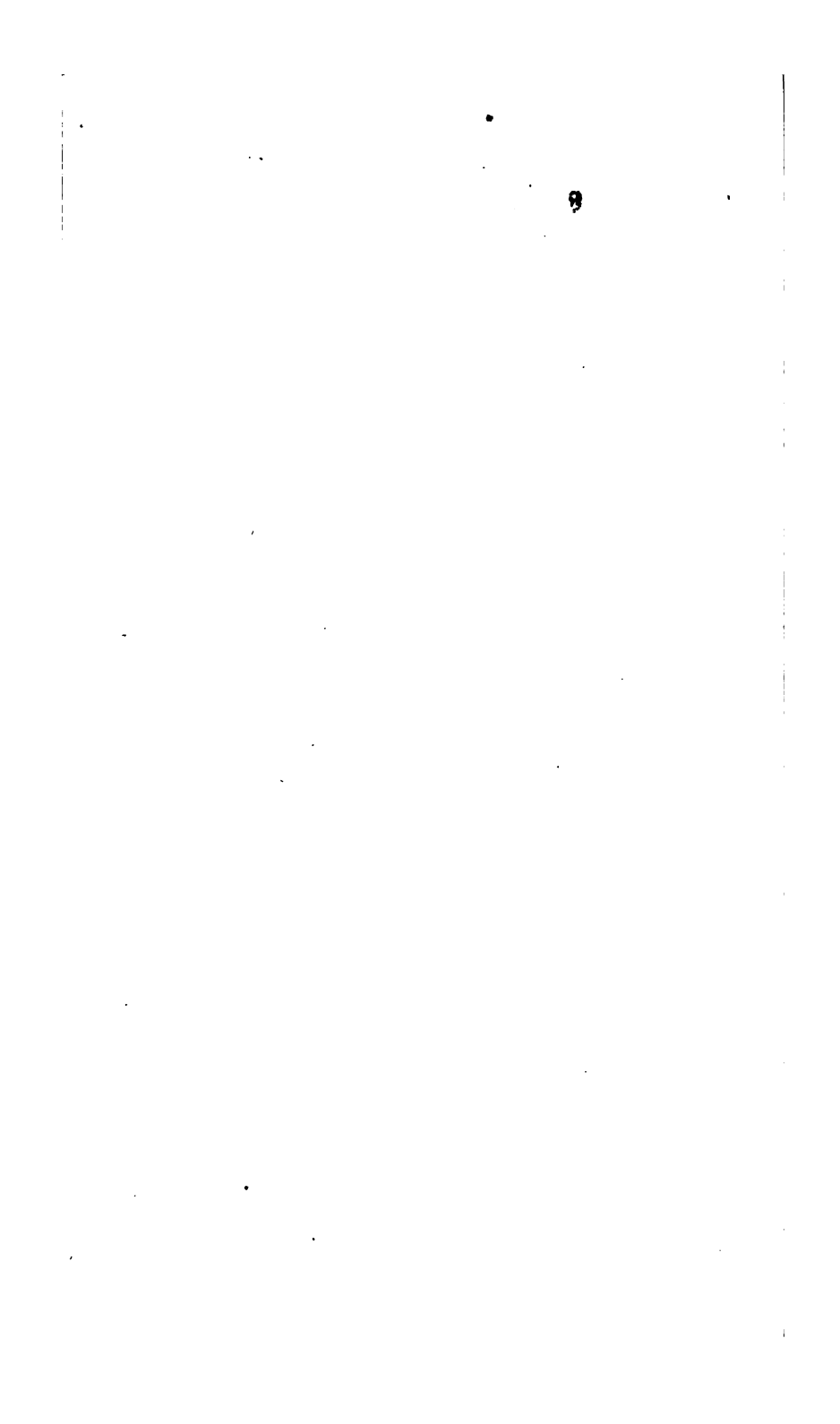
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THE LAW
OF THE
Hustings and Poll Booths,

BEING
A MANUAL OF THE LAW GOVERNING THE
SUCCESSIVE STAGES OF A CONTESTED
ELECTION.

BY
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1857.



PREFACE.

THIS little handbook does not aspire to rank as a professional treatise on the law of elections; nor do I wish that it should be relied upon as all-sufficient in points of difficult legal controversy.

Having occasion to look closely into the statutes that confer and regulate the exercise of the electoral franchise, I found them more multifarious and more incongruous than I had before believed. I thought, therefore, that at this conjuncture I might perform an office of humble utility, by simplifying, for the use of candidates, returning officers, and voters, those acts, and fragments of partially-repealed acts, which create their rights and liabilities.

Legislation upon this subject is so constant and so spasmodic, that our large legal treatises halt behind it. When I undertook this little work there was none which shewed the law as it is. The Editors of Mr. Roger's work have at length overtaken it by a new edition: but as

some smaller book for general use seemed to be still a desideratum, I did not throw aside what I had written.

I am not without a hope that these pages may be read when the excitement of the present contest has passed away, for the purpose of noting in what points our present futile laws against corruption fail.

G. W. C.

2, Brick Court, Temple,
March 16, 1857.

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CHAPTER I.

THE VACANCY.

THE House of Commons consists of 654 members, whereof 467 are English, 29 are Welsh, 53 are Scotch, and 105 are Irish.

Vacancies occur by the general dissolution of Parliament by act of law (which, by the 1 Geo. I. st. 2. c. 38., would take place at the end of seven years from the return of the writ whereby it was summoned, or at the end of six months after the death of the Sovereign, 7 and 8 W. III. c. 15., and 6 Anne, c. 7.); or by act of the Sovereign, in exercise of the royal prerogative; or by the secession or disqualification of some particular sitting member.

The causes of particular vacancies are, death, accession to the English or Scotch peerage, acceptance of office, taking orders, expulsion, declaration that the election was void, bankruptcy of the sitting member,* after the expiration of twelve months without the commission being superseded or the debts paid.

After a general dissolution the Crown has three years, in theory, before the law (6 W. and M. c. 2.) requires that a new Parliament should be summoned; but as the Parliament holds the power of the purse, the practical necessity is immediate. A warrant goes from the Queen in Council to the Lord Chancellor† to issue writs for the election of knights, citizens, and burgesses to serve in Parliament.

* 24 Geo. III. c. 114.

† 52 Geo. III. c. 24.

In cases of particular vacancies—if during the session—a motion is made in the house, and the Speaker makes his warrant to the clerk of the Crown in Chancery to issue writs for electing a member for the vacant seat; if during the recess (24 Geo. III. c. 26.), the Speaker receives notice of the vacancy, certified by two members. He then forthwith (24 Geo. III. c. 26. s. 3., and 52 Geo. III. c. 114. s. 2.) causes notices to be inserted in the Gazette, and fourteen days after the insertion, makes out a new writ.

CHAPTER II.

THE VOTERS.

THE body of men who are facetiously called “the country” amount to 1,206,539 out of a population of 28,000,000. These are their qualifications:—

County Voters for England and Wales.—The electors of knights of the shires consist of four classes; namely, freeholders, copyholders and tenants in ancient demesne, leaseholders, and tenants or occupiers of land.

1. All freeholders, that is to say, persons holding land for their own life, or the life of another person, or for an estate of inheritance, are entitled to vote for the county in which their freehold is situate, provided it is worth not less than forty shillings by the year, clear of all deductions and charges, except parliamentary and parochial taxes. But persons holding freeholds for life (unless they had or might acquire the

right of voting previous to the passing of the stat. 2 and 3 Wm. IV. c. xlv., and remain seised of the land) are not now entitled to vote either in counties, or in cities that are counties, except the land be of the yearly value of 10*l.*, or the tenancy came to them by marriage, marriage-settlement, devise, or promotion to office. (2 and 3 Wm. IV. c. xlv. §. 18, 21.)

2. The holders of copyholds, or land of any other tenure that is not freehold, for life, or any greater estate, of the value of not less than 10*l.* clear yearly value.

3. Leaseholders entitled to any term originally created for sixty years (whether determinable on lives or not), where the lands are worth 10*l.* a year; or for any term originally created for twenty years (whether determinable on lives or not), of the yearly value of 50*l.* A sub-lessee, or assignee, of such terms of sixty and twenty years, may vote, provided he is in actual occupation of the premises.*

4. Persons occupying lands for which they pay a *bond fide* rent of not less than 50*l.* a year.

Borough Voters for England and Wales.—

1. The owners, or tenants in the actual occupation of houses or other buildings, either separately or jointly with land, of the clear yearly value of 10*l.*, situated within such cities or boroughs.*

2. Burgesses and freemen who have resided within the city or borough for six months previous to the month of July in the year when the election takes place. But no burgess or freeman

* 2 and 3 Wm. IV. c. xlv. §. 19.

is entitled to vote who has become a burgess or freeman after the 1st of March 1831 otherwise than by birth or servitude; and those claiming by birth must derive their title from persons admitted, or entitled to be admitted, burgesses or freemen previous to that day, or becoming so since that time in respect of servitude.

3. Inhabitants of cities and boroughs paying scot and lot, sometimes called potwalloppers, who are qualified and entitled by the usages of such cities and boroughs to vote, and who were entitled to vote before the passing of the act 2 and 3 Wm. IV. c. xlv. Thus that species of qualification will expire with the present possessors.

4. The freeholders and burgage tenants in cities and boroughs which are not counties within themselves. But such freeholders and burgage tenants are not entitled to vote in respect of property acquired after the 1st of March 1831, unless it came to them between that day and the passing of the act 2 and 3 Wm. IV. c. xlv., that is to say, the 7th of June 1832, by descent, marriage, marriage-settlement, devise, or promotion to an office or benefice.

*County Voters for Scotland.**—1. Freeholders, the owners in possession of land, houses, or other heritable property, of the clear yearly value of 10*l.*, within the county; and the freeholders who were on the roll of any shire, or who were entitled to be put on such roll, at the passing of the act 2 and 3 Wm. IV. c. lxx., that is to say,

* Erskine, Inst. (ed. Macallan), b. i. tit. iii. §. 8. note. 2 and 3 Wm. IV. c. lxx.—*Bowyer's Commentaries on the British Constitution.*

the 1st day of March 1831, and who retain their qualifications.

2. Tenants holding under leases for not less than fifty-seven years, at the option of the landlord, or for their lifetimes, where their interest is of the clear yearly value, after paying the rent, of not less than 10*l.*; or holding under leases for not less than thirteen years, where the clear yearly value is not less than 50*l.*; or who have been for twelve months before the last day of July in each year in the actual personal occupancy of any such subject, where the yearly rent is not less than 50*l.*; and tenants, whatever the rent may be, who have paid for their interest in the subject a price, grassum, or consideration of not less than 300*l.*

Borough Voters for Scotland.—Persons in the occupancy, either as proprietors, tenants, or life-renters, of houses or other buildings, with or without land, of the yearly value of 10*l.*, within the city, borough, or town (provided they have paid assessed taxes on or before the last day of July) in which they claim to exercise their franchise.

County Voters for Ireland.—In Ireland the county members are elected* by freeholders of 10*l.* a year (the forty-shilling freeholders having been disfranchised, and the qualification raised to that amount by the 10 Geo. IV. c. viii.); by copyholders of 10*l.* a year; and by leaseholders of terms originally for sixty years (whether determinable on lives or no), of the yearly value of 10*l.*; or for fourteen years, in like manner, of the yearly value of 20*l.*; or for twenty years, having

* See 2 and 3 Wm. IV. c. lxxviii.

a beneficial interest of the clear yearly value of 10*l*.

Borough Voters for Ireland.—Occupiers as tenants or owners of houses, or other buildings, with or without land, within the city or borough, of the clear yearly value of 10*l*.; in cities and towns of counties, forty-shilling freeholders entitled to register at the passing of the stat. 3 and 4 Wm. c. lxxxviii., that is to say, on the 7th of August 1832, so long as they retain the same qualification; freemen of cities, or towns, or boroughs, provided they be resident in the city, town, or borough, or within seven miles of it, and are not mere honorary freemen.

The voter must not only have one of these qualifications, but he must also be duly registered.

The machinery is, in England, regulated by the 6 Vic. c. 18. The clerk of the peace for each county annually issues printed forms, notices, and lists to the overseers. The overseers, before the 21st of June, publish notices that all persons not upon the register, but claiming to be put on, send in their claims on or before the 20th of July. After the 20th of July, and before the 1st of August, the overseers prepare and publish a list of claims. Any person on the register may, by a signed objection, delivered before the 26th of August, or the overseers may, by a marginal note, object to any claimant. Before the 29th of August the objections are delivered by the overseer to the clerk of the peace, together with the register.

In boroughs the town clerk, or person who acts in that capacity, on or before the 10th of

June, issues his forms and schedules to the overseers of the parishes within his borough. The overseers then, before the 20th of June, give notice that persons will not be admitted to the register unless they pay, by the 20th of July, all the poors'-rates due before the 5th of January. The overseers then, on or before the last day of July, make out lists of voters—except freemen, whereof the list is to be made by the town-clerk. Signed objections are made before the 26th of August.

Between the 14th of September and the 1st day of November the revising barristers (appointed by the Lord Chief Justice for the Metropolitan and Middlesex boroughs, and by the senior judge on circuit for the provinces) hold their circuits, and decide, in open court, on the validity of claims and objections, and sign each page of the registry. An appeal is allowed, upon a case drawn by the revising barrister, to the Common Pleas, and the registry is perfect.

This register is, as to English and Irish elections, conclusive evidence that the persons named in it continue to have the qualifications which are annexed to their names respectively; and no scrutiny is allowed before the returning officer. There are provisos as to loss of qualification, and also as to residence; but these do not affect the admissibility of the vote at the poll-booth. It may be convenient to insert the enactment here.

“ At every future election for a member or members to serve in Parliament for any county, city, or borough, the register of voters so made as aforesaid shall be deemed and taken to be conclusive evidence that the persons therein named continue to have the qualifications which are an-

nexed to their names respectively in the register in force at such election: Provided always, that it shall not be lawful for any person to vote at any election for a member or members for any county where the qualification annexed to the name of such person shall have appeared annexed to his name in the preceding register, and such person, on the last day of *July* in the year in which such register so in force was formed, shall have ceased to have such qualification, or shall not have retained so much thereof as would have entitled him to have had his name inserted in such register: Provided also, that no person shall be entitled to vote at any future election for a member or members to serve in Parliament for any city or borough, unless he shall, ever since the thirty-first day of *July* in the year in which his name was inserted in the register of voters then in force, have resided and at the time of voting shall continue to reside within the city or borough, or place sharing in the election for the city or borough in the election for which he shall claim to be entitled to vote, or within the distance thereof required by the said recited act (seven miles) to entitle such person to be registered in any year."

A voter is also disqualified from voting by receipt of parochial relief. Employment as a parish labourer is a receipt of parochial relief. Relief given to any one whom the voter is by law bound to support is relief given to the voter. This doctrine was carried very far in the Bedford case, P. and K. 130. Having been excused payment of rates has been held not to be receipt of parochial relief. These objections, however, only go to the registration, or, if the facts occur after the registration, then to the scrutiny before the Committee. The decisions are conflicting, and it is doubtful whether receipt of alms by a county elector who retains his freehold is a disqualification. As to the actual contest at the hustings and the polling-booths, these questions are unimportant.

Voters are also disqualified by office, and this disqualification is of more practical importance; because, although a voter so disqualified must be entered in the poll-book if he tender his vote, yet the disqualifying statutes frequently impose penalties upon the voter so acting.

The principal disqualifying act is 22 Geo. III. c. 41., which is so stringent, that it may be useful to have the exact terms of the act at hand during a contested election. They are as follows :—

“ For the better securing the freedom of elections of members to serve in Parliament, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of August, one thousand seven hundred and eighty-two, no commissioner, collector, supervisor, gauger, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying, or managing the duties of excise, or any branch or part thereof; nor any commissioner, collector, comptroller, searcher, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying, or managing the customs, or any branch or part thereof; nor any commissioner, officer, or other person concerned or employed in collecting, receiving, or managing, any of the duties on stamped vellum, parchment, and paper, nor any person appointed by the commissioners for distributing of stamps; nor any commissioner, officer, or other person employed in collecting, levying, or managing, any of the duties on salt; nor any surveyor, collector, comptroller, inspector, officer, or other person employed in collecting, managing, or receiving, the duties on windows or houses; nor any postmaster, postmasters-general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting, or managing the revenue of the post-office, or any part thereof, nor any captain, master, or mate, of any ship, packet, or other vessel, employed by or under the postmaster or postmasters-general in conveying the mail to and from foreign ports, shall be

capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, to serve in Parliament for any county, stewartry, city, borough, or cinque port, or for choosing any delegate in whom the right of electing members to serve in Parliament, for that part of *Great Britain* called *Scotland*, is vested: and if any person hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote, during the time he shall hold, or within twelve calendar months after he shall cease to hold or execute any of the offices aforesaid, contrary to true the intent and meaning of this act, such votes so given shall be held null and void to all intents and purposes whatsoever, and every person so offending shall forfeit the sum of *one hundred pounds*, one moiety thereof to the informer, and the other moiety thereof to be immediately paid into the hands of the treasurer of the county, riding, or division, within which such offence shall have been committed, in that part of *Great Britain* called *England*; and into the hands of the clerk of the justices of the peace of the counties or stewartries, in that part of *Great Britain* called *Scotland*, to be applied and disposed of to such purposes as the justices at the next general quarter session of the peace to be held for such county, stewartry, riding, or division, shall think fit; to be recovered by any person that shall sue for the same, by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at *Westminster*, in which no *essoin*, protection, privilege, or wager of law, or more than one imparlance, shall be allowed; or by summary complaint before the court of session in *Scotland*; and the person convicted on any such suit shall thereby become disabled and incapable of ever bearing or executing any office or place of trust whatsoever under his Majesty, his heirs and successors."

There are exceptions in favour of commissioners of land-tax, holders of freehold offices, and the coal and corn-meters of London. Proceedings are limited to twelve months after the offence. Persons in the employ of the Post-office and the metropolitan and rural police-force, together with the stipendiary magistrates, and all their staff, are disqualified by other statutes.

Local constables, appointed under the County and District Constables' Act (3 and 4 Vic. c. 88.) The disqualification of the police is, however, local, not extending to places distant from the sphere of their duties.

CHAPTER III.

THE CANDIDATE.

THE candidate must be a British subject—of the full age of twenty-one years—holding no disqualifying office or contract—not in orders—not having been engaged in a contest for the same place during the same Parliament, and declared by a Committee to have been, by himself or his agents, guilty of bribery or treating—not attainted of treason or felony, or a criminal outlaw—not a peer of Parliament or of Scotland—and possessed of a property qualification of 300*l.* a year for boroughs (in England and Ireland), or 600*l.* a year for counties.

It will be necessary to enlarge a little upon these conditions of qualification.

1. *He must be a British subject.* Nothing but an act of naturalization can enable an alien born to sit in Parliament. Certificates of naturalization under the 7 and 8 Vic. c. 66. have not this effect. Persons obtaining the certificate, and taking the oath prescribed by that act, “enjoy all the rights and capacities which a natural-born subject of the United Kingdom can enjoy or transmit, except that such alien shall not be capable of becoming of Her

Majesty's Privy Council, nor a member of either House of Parliament, nor of enjoying such other rights and capacities, if any, as shall be specially excepted in the certificate."

A man whose father is a British subject is himself a British subject wherever his place of birth or domicile may have been. The right of the son is not affected by any attempts that may have been made by the father to divest himself of his allegiance.

2. *He must be of full age.* If there be reason to believe that a candidate has not attained the age of 21, the opposing candidate should issue notice of this fact. The votes given for him after such notice will be thrown away, and the other candidate declared duly elected. (See C. J. Abbott's judgment in *Claridge v. Evelyn*, 5 B and Ald. 87.) If a minor be returned, the Committee will, even if he do not appear to defend his seat, resolve that his election and return were vexatious. (See the Flintshire case, 1 Peck, 526.)

3. *He must hold no disqualifying office.* Disqualifying offices are of two sorts, those which disqualify a candidate from being elected, and those which disqualify a member from sitting.

Of the latter class are those officers who are disqualified by the 5 W. and M. c. 7., which enacts, that no *member* shall be concerned in managing duties granted by Parliament; except only the Commissioners of the Treasury. The 11 and 12 W. III., which enacts, that no *member* shall be capable of being an officer in the Customs. These offices do not form an objection at the hustings, for they may

be resigned after election, and before sitting.
(See Hatsell's Prec. 2. 54.)

The former class are very numerous. They depend upon various statutory enactments. The principal of these is the 25th sec. of the 6th Anne, c. 7., which enacts, that no person who shall have, in his own or any other's name or for his benefit, any office of profit under the Crown created after the 25th October 1705, or who shall be commissioner or sub-commissioner, or secretary, or receiver of prizes, or comptroller of the accounts of the army, or commissioner of transports, or commissioner of sick and wounded, or agent for any regiment, or commissioner for wine licences, or governor or deputy-governor of any of the plantations, or commissioner of the navy employed in any of the outports, or who shall have any pension from the Crown during pleasure, shall be capable of *being elected*, or of sitting and voting, &c.

The disqualification as to pensions during pleasure has been extended by a subsequent statute to pensions for terms of years (but it has been decided that neither statute applies to pensions held in right of a wife). By the 15 Geo. II. c. 22., no commissioner of the revenue in Ireland, or commissioner of the navy or victualling offices, nor their deputies or clerks in those offices, nor in the offices of the commissioners of the treasury, auditor of the exchequer, tellers, or chancellor of the exchequer, or of the admiralty, or of the paymaster of the army or navy, or of the secretaries of state, or of the commissioners of salt or stamps or appeals, or of wine, hackney-coach, or hawkers' licences, nor any

person having any employment in Minorca or Gibraltar, except officers having commissions in any regiment, are capable of election. The exceptions in this act are, the treasurer and comptroller of the navy, the secretaries of the treasury, the secretary to the chancellor of the exchequer, and secretaries of the admiralty, the under secretaries of state, the deputy paymaster of the army, and all persons holding office for life, or *quamdiu se bene gesserint*.

By the 7 Geo. II. c. 16. 34., no judge of the Court of Session or justiciary or baron of the Court of Exchequer in Scotland is capable of election. The English Common-Law Judges were formerly capable of election, but they are now disqualified—as it is said, because they are the advisers of the House of Lords, but in reality for other and very obvious reasons.

Many additions have been made to this list. Returning officers are of course disqualified from returning themselves. Recorders are incapable of being elected for their own boroughs. Revising barristers cannot sit for the places where they revised for eighteen months after their last revision. The judge of the High Court of Admiralty and County-Court judges are altogether excluded; so are commissioners under the tithe and inclosure, and poor-law commissions (except the president of the Poor-law Board), and the commissioners of police for the city of London: and it will be generally found that the officers acting in the execution of modern statutes, and deriving profit from their offices, are specially excluded from the House of Commons, and that the enactment

which excludes them renders them incapable of being elected, as well as of sitting.

Government contractors are incapable of being elected. The 22 Geo. III. c. 45. enacts, that "any person who shall directly or indirectly himself or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in the whole or in part, any contract, agreement, or commission, made or entered into with, under, or from the commissioners of His Majesty's treasury, or of the navy or victualling office, or with the master-general or board of ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever for or on account of the public service; or shall knowingly and willingly furnish or provide, in pursuance of any such agreement, contract, or commission, which he or they shall have made or entered into as aforesaid, any money to be remitted abroad, or any wares or merchandize to be used or employed in the service of the public, shall be incapable of being elected, or of sitting or voting as a member of the House of Commons during the time that he shall execute, hold, or enjoy any such contract, agreement, or commission, or any part or share thereof, or any benefit or emolument arising from the same."

4. *He must not be in holy orders.* By the 41 Geo. III. c. 63., it is enacted, that the return of any priest or deacon or minister of the Kirk of Scotland to sit in Parliament shall be void. Mr. Bowyer, in his very learned *Commentaries on the British Constitution*, remarking upon this statute and the 10 Geo. IV. c. 7. sec. 9., says,

"It is a somewhat curious circumstance that the Act of George the Third mentions only priests, deacons, and ministers of the Kirk. It would appear, then, that a Scotch bishop, and all bishops, except Roman Catholics, not holding any see in England or Ireland, may sit in the House of Commons. Roman-Catholic bishops, priests, and deacons, are disqualified by 10 Geo. IV. c. 7., sec. 9. But the act only specifies *holy* orders. So it would seem that a person in minor orders in the Church of Rome might sit in the House of Commons, though he were a cardinal. It is quite clear that a monk or friar may be elected and sit in the House of Commons, and so may a prelate of the Court of Rome, provided they are not in orders. (See concerning the distinction between holy and minor orders, Catech. Concil. Trident. par. 2, secs. 26 and 52)."

5. *He must not be disqualified by bribery or treating.* By the 36th section of the Corrupt Practices Prevention Act 1854, continued by the 18 and 20 Vic. c. 84. to the 10th August 1857, and thence to the end of the next session, it is enacted, that "if any candidate at an election for any county, city, or borough, shall be declared by any Election Committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected, or sitting in Parliament for such county, city, or borough, during the Parliament then in existence."

6. *He must not be attainted or an outlaw.* This requires no commentary. It may be remarked, however, that outlawry in treason or felony is

equal to conviction; and see an anonymous case 1 And. 293 pl. 301. Outlawry in civil cases creates no disqualification.

7. *He must not be a peer of Parliament or of Scotland.* Scotch peers are represented in the House of Peers, the election taking place every Parliament. Irish peers are eligible by virtue of the Irish Act of Union.

8. *He must be possessed of a property qualification.* This condition does not apply to the sons or heirs-apparent of peers or Lords of Parliament (including bishops), nor to the members of the Universities of Oxford or Cambridge, and Trinity College Dublin, nor to the sons and heirs-apparent of persons qualified to serve as a knight of the shire, nor to the representatives of Scotland.

The qualification requisite depends upon the 1 & 2 Vic. c. 48., which enacts, "that after the passing of that act no person shall be capable of being elected a member of the House of Commons for any county, riding, part, or division of a county, within that part of *Great Britain* called *England*, the dominion of *Wales*, or *Ireland*, unless he shall be seised or entitled, for his own use and benefit, of and to an estate, legal or equitable, in lands, tenements, or hereditaments, of any tenure whatever, situate, lying, or being within the United Kingdom of *Great Britain* and *Ireland*, or in the rents and profits thereof, for his own life or for the life or lives of any other person or persons then living, or for a term of years, either absolute or determinable on his own life or on the life or lives of any other person or persons then living, of

which term not less than thirteen years shall be at the time of his election unexpired, such estate being of the clear yearly value of not less than six hundred pounds over and above all incumbrances affecting the same; or unless he shall be possessed or entitled, for his own use and benefit, at law or in equity, for his own life or for the life or lives of any other person or persons then living, or for any term of years, either absolute or determinable on his own life or on the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, of or to personal estate or effects of any nature or kind whatsoever within the said United Kingdom of *Great Britain* and *Ireland*, or the interest, dividends, or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends, or annual proceeds actually producing the clear yearly income of not less than six hundred pounds over and above all incumbrances affecting the same; or unless he shall possess more than one of the several kinds of qualification hereinbefore mentioned, the several qualifications of or to which he shall be so seised, possessed, or entitled being jointly of sufficient value to qualify a person as a member to serve in Parliament for any county according to the provisions herein contained, although each of such qualifications may, according to the same provisions, be separately insufficient for that purpose; nor shall any person be capable of being elected a Member of the House of Commons for any city, borough, or cinque port with-

in that part of *Great Britain* called *England*, the dominion of *Wales*, the town of *Berwick-upon-Tweed*, or *Ireland*, unless he shall be seised or entitled, for his own use and benefit, of and to an estate, legal or equitable, in lands, tenements, or hereditaments, of any tenure whatever, situate, lying, or being within the United Kingdom of *Great Britain* and *Ireland*, or in the rents and profits thereof, for his own life or for the life or lives of any other person or persons then living, or for a term of years, either absolute or determinable on his own life or on the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, such estate being of the clear yearly value of not less than three hundred pounds over and above all Incumbrances affecting the same; or unless he shall be possessed or entitled for his own use and benefit, at law or in equity, for his own life or for the life or lives of any other person or persons then living, or for any term of years, either absolute or determinable on his own life or for the life or lives of any other person or persons then living, of which term not less than thirteen years shall be at the time of his election unexpired, of or to personal estate or effects of any nature or kind whatsoever, situate within the said United Kingdom, or the interest, dividends, or annual proceeds of any such personal estate or effects, such personal estate or effects, interest, dividends, or annual proceeds, actually producing the clear yearly income of not less than three hundred pounds

over and above all Incumbrances affecting the same; or unless he shall possess more than one of the several kinds of qualification hereinbefore mentioned, the several qualifications of or to which he shall be so seised, possessed, or entitled being jointly of sufficient value to qualify a person as a member to serve in Parliament for any borough, according to the provisions herein contained, although each of such qualifications may, according to the same provisions, be separately insufficient for that purpose; and if any person who shall be elected or returned to serve in any Parliament for any county, riding, part, or division of a county, city, borough, or cinque port as aforesaid, shall not at the time of such election and return be qualified in manner above mentioned, such election and return shall be void."

The enactment amounts to this, that every candidate must have either an unincumbered interest for a life or for thirteen years certain in property, the net proceeds of which amount to 600*l.* a year for candidates for counties, or 300*l.* a year for candidates for boroughs.

These are the eight positive and negative qualifications requisite to eligibility as a member of the House of Commons.

I may add here that a candidate is not privileged from arrest while going to or returning from the hustings.

Thus much for the candidate.

CHAPTER IV.

THE RETURNING OFFICER.

IN county elections the sheriff is the returning officer, for it is in his court that the election proceedings are had.

The returning officer in boroughs is the chief officer of the borough, and his designation depends upon the charter or upon prescriptive usage.

Special provision was, however, required to constitute returning officers for the new boroughs created by the Reform Act. By the second section of that act the sheriff of the county was directed to appoint, every year, in the month of March, returning officers for every new borough which was not specifically provided with a returning officer by the schedules of that act. Out of forty-two boroughs named in schedules C and D, in only thirteen are returning officers provided, so that the sheriff appointed in thirty-one boroughs. But there is a proviso that his nomination shall cease if the Crown should grant a charter of incorporation; and since that time several such charters have been granted.

When the sheriff appoints, no person can be compelled to act as returning officer more than once: persons in holy orders, and churchwardens and overseers, are disqualified; and persons qualified to be returned as members may claim exemption within one week after notice of their appointment.

By the 6 and 7 W. IV. c. 101., if the office of returning officer shall be vacant at the time when any act ought to be done by or with regard to the returning officer of a borough, the sheriff, or his deputy, shall act as returning officer.

By the 17 and 18 Vic. c. 57., every writ for making any election of a member for a borough shall be directed to the returning officer, or his deputy, and, in their absence, to the sheriff of the county; and in all cases whatever, whenever there shall be, either from temporary vacancy, or from some other cause, no person duly qualified in the borough to perform the duties of returning officer, the sheriff of the county shall be charged with the execution of the writ.

The earliest duty of the returning officer is the appointment of election auditors. The 15th section of the Corrupt Practices Prevention Act, 1854, enacts that, "once in every year, in the month of *August*, the returning officer of every county, city, and borough shall appoint a fit and proper person to be an election officer, to be called 'Election Auditor or Auditor of Election Expenses,' to act at any election or elections for and during the year then next ensuing, and until another appointment of election auditor shall be made; and such returning officer shall, in such way as he shall think best, give public notice of such appointment in such county, city, or borough; provided that any person appointed an election auditor may be re-appointed as often as the returning officer for the time being shall think fit; and that every person who shall be an election auditor on the day appointed for any election shall con-

tinue to be the election auditor in respect of such election until the whole business of such election shall be concluded, notwithstanding the subsequent appointment of any other person as election auditor; and every election auditor upon his appointment shall make and sign before the returning officer the following Declaration :

‘ I [*A. B.*] do solemnly and sincerely promise
‘ and declare, that I will well and truly and faithfully, to the best of my ability in all things,
‘ perform my duty as election auditor, according to the provisions of the Corrupt Practices
‘ Prevention Act, 1854.’

“And every election auditor wilfully doing any act whatever contrary to the true intent and meaning of such declaration shall be deemed guilty of a misdemeanor, and in Scotland of an offence punishable with fine and imprisonment.”

So soon as the Queen has directed her bill to the Lord Chancellor, the Lord Chancellor sends his warrant to the Clerk of the Crown Office, and the writs issue.

The 7th and 8th W. III. c. 25. sec. 1., enacted that when any new Parliament shall be called, there shall be forty days between the tests and returns of the writs of summons. The 22d article of the Act of Union with Scotland, 5 Anne, c. 8., provided that the Queen might, by proclamation, appoint the first Parliament of Great Britain, to meet at such time and place as she might think fit, “which time shall not be less than the date of fifty days after the date of such

proclamation." Hence the reason why fifty days were required for a new Parliament.

This venerable superstition has, however, been destroyed by a recent Act of Parliament. The 15 and 16 Vic. c. 23. enacts, that so often as Her Majesty shall, by her royal proclamation, appoint a time for the first meeting of a Parliament after a dissolution, the time so to be appointed may be any time not less than thirty-five days after the date of such proclamation; the act of the fifth year of Queen Anne, c. 8., or the act of the seventh and eighth years of William III. c. 25. notwithstanding.

The writs issue in the following form :

VICTORIA by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, to the Sheriff of the county of — greeting: whereas by the advice and assent of our council, for certain arduous and urgent affairs concerning us, the state and defence of our kingdom of Great Britain, and the church, we have ordered a certain Parliament to be holden at our City of Westminster, on the — day of —, next ensuing, and there to treat and have conference with the prelates, great men, and peers of our realm; we command and strictly enjoin you, that (proclamation being made of the day and place aforesaid, in your next County Court to be holden after the receipt of this our writ,) two knights, of the most fit and discreet of the said county, girt with swords, of the most sufficient and discreet, freely and indifferently, by those who at such proclamation shall be present, according to the form of the Statutes in that

case made and provided, you cause to be elected; and the names of those knights, so to be elected, (whether they be present or absent,) you cause to be inserted in certain indentures, to be thereupon made between you and those who shall be present at such election; and then at the day and place aforesaid you cause to come, in such manner, that the said knights for themselves, and the commonalty of the same county, may have from them full and sufficient power to do and consent to those things which then and there, by the Common Council of our said kingdom, (by the blessing of God,) shall happen to be ordained upon the aforesaid affairs; so that, for want of such power, or through an improvident election of the said knights, the aforesaid affairs may in no wise remain unfinished. Willing, nevertheless, that neither you, nor any other sheriff of this our said kingdom, be in anywise elected; and that the election in your full county so made distinctly and openly, under your seal, and the seals of those who shall be present at such election, you do certify to us in our Chancery, at the day and place aforesaid, without delay, remitting to us one part of the aforesaid indenture annexed to these presents, together with this writ. Witness Ourselves, at Westminster, the — day of —, in the — year of our reign.

(To be endorsed when received.)

Received this writ the — day of —, by the hands of —.

A. B. Sheriff.

(To be endorsed when returned.)

The execution of this writ appears in a certain Indenture hereunto annexed.

A. B. Sheriff.

These endorsements are rendered necessary by the provisions of the 53 Geo. III. c. 89., which regulates the formalities with which these important documents are transmitted through the Post-office.

Within two days after the receipt of the writ the Sheriff makes his proclamation of the day of nomination for the county, or the days of nomination for the divisions of the county. This proclamation is in the form following.

Proclamation to be used in Counties.

Election of knight, &c.

THE sheriff of the County of — will, at the — day of — now next ensuing, proceed to the election of a knight *or* knights, member *or* members [*as the case may be*] for the county *or* division of a county [*as the case may be*], at which time and place all persons entitled to vote at the said election are requested to give their attendance.

And take notice, that all persons who are guilty of bribery at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the “The Corrupt Practices Act, 1854.”

And take notice, that all persons who are guilty of treating or undue influence at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf

in "The Corrupt Practices Prevention Act, 1854."

Signature of the proper officer.

The appointed day must be not later than the 12th nor earlier than the 6th from the date of the proclamation (16 & 17 Vic. c. 68. sec. 2.) The time of day must be between eight and eleven of the forenoon (23 Hen. VI. c. 17.)

The enactment which now regulates the time of holding the election is as follows :

"Whereas by the fourth section of the act of the twenty-fifth *George* the Third, chapter eighty-four, it is provided, that immediately after the receipt of the writ for making any election of a knight or knights to serve in Parliament for any county or shire in *England* or *Wales*, and endorsing on the bank thereof the day of receiving the same, as by law required, it should and might be lawful for the sheriff of such county and he is thereby required, within two days after the receipt thereof, to cause proclamation to be made at the place where the ensuing election ought by law to be holden of a Special County Court to be there holden for the purpose of such election only on any day (*Sunday* excepted) not later from the day of making such proclamation than the sixteenth day nor sooner than the tenth day: And whereas it is expedient to limit the time for proceeding to such elections: Be it therefore enacted, That hereafter any such Special County Court for the purpose of the election of a knight or knights to serve in Parliament for any county, riding, parts, or division of any county in *England* or *Wales*

shall be holden on any day (*Sunday, Good Friday, and Christmas Day* excepted) not later from the day of making such proclamation than the twelfth day nor sooner than the sixth day ; provided that this section shall not apply to the election for any county of a city or of a town."

Formerly the original writ issued only to the sheriff, and commanded him to make returns for the whole county. The sheriff thereupon issued his precept to the returning officers of the boroughs.

Recently, however, the intervention of the sheriff in borough returns has been discontinued. An original writ goes to each returning officer.

The following is the enactment (16 & 17 Vic. c. 68. sec. 1.) whereby this amendment has been made.

"The writ for any election hereafter to be directed to the sheriff of any county in *England* or *Wales* (other than the county of a city or of a town) shall require such sheriff to cause election to be made of a knight or knights to serve in Parliament for such county, and for any riding, parts, or division thereof only, and not further or otherwise ; the writ for making any election of a member or members to serve in Parliament for the Universities of *Oxford* and *Cambridge*, and for every borough, town corporate, port, or place returning members to serve in Parliament in *England* and *Wales*, shall hereafter be directed to the vice chancellors of the said Universities, and to the returning officers of such

boroughs, towns corporate, ports, and places respectively; and such vice chancellors and returning officers shall thereupon in due course of law proceed to election, and after such election certify the same, together with the writ, according to the directions thereof; all such writs hereafter to be issued, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs, shall be and the same are hereby authorized to be framed and expressed in such manner and form as may be necessary for carrying the provisions of this act into effect."

The returning officers of the borough now issue their notices, in obedience to the writ.

Notice of Election in Boroughs.

City or Borough of —, — day of —

In pursuance of a writ received by me —
— for electing a burgess or burgesses [*as the case may be*], to serve in Parliament for the city or borough [*as the case may be*], I do hereby give notice, that I shall proceed to election accordingly on the — day of — at — o'clock in —, when and where all persons concerned are to give their attendance.

And take notice, that all persons who are guilty of bribery at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act, 1854."

And take notice, that all persons who are guilty of treating or undue influence at the said

election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "The Corrupt Practices Prevention Act."

Signature of the proper officer.

The time for proceeding to election is not less than four, nor more than six days after the day of the delivery of the precept. This is regulated by the 16 & 17 Vic. c. 68., which, after repealing the 3 & 4 Vic. c. 81., enacts, "In every city or town being a county of itself, and in every borough, town corporate, port, or place, returning or contributing to return a member or members to serve in Parliament in *England* and *Wales*, the officer to whom the duty of giving notice for the election of such member or members belongs shall proceed to election within six days after the receipt of the writ or precept, giving three clear days notice at least of the day of election, exclusive of the day of proclamation and the day of election."

The returning officer having made his proclamation at all the polling-booths for the county, between the hours of eight and four in the spring and summer half-year, and between eight and six in the winter half-year, or having, in boroughs, given his notices at all the usual places, the preliminary work of the election, so far as the returning officer is concerned, appears to be complete.

It is proper here to remark, that although every minute portion of these proceedings is carefully prescribed by statute, and although the returning officer would be either subject to penalties, or

liable to be censured or imprisoned by the House of Commons for neglecting them, mere irregularities do not vitiate an election. Even if the returning officer be an usurper in his office, the election is good; and if the notices should be insufficient, even as respects the number of days required by statute, the better opinion, amid conflicting cases, seems to be, that the election would not be invalidated, unless it were shewn that the result of the election was affected by the irregularity. See the Athlone case, Bar. and Arn., 119. The decisions have been nearly uniform, that such objections as informal demand of poll, non-swearing of poll-clerks, or illegal adjournment of the poll, are not sufficient to invalidate the election. Even when the poll was opened and closed at unstatutable hours, the result not having, in the opinion of the Committee, been affected by this circumstance, the election was upheld.

CHAPTER V.

THE NOMINATION.

ON the day appointed in the proclamation or notice, the returning officer having taken his seat, and the usual formalities of proclaiming silence having been performed, the business commences with the reading of the writ.

It will probably be thought decent and convenient to continue this formality, although it is now no longer legally necessary, since that por-

tion of the act of 2 Geo. II. c. 24. which required it is now repealed.

After the reading of the writ the returning officer must, under penalty of 50*l.* for wilful omission, take the following oath—

“I, *A. B.*, do solemnly swear that I have not, directly nor indirectly, received any sum or sums of money, office, place, or employment, gratuity or reward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself or any other person, to my use, or benefit, or advantage, for making any return at the present election of members to serve in Parliament; and that I will return such person or persons as shall to the best of my judgment appear to me to have the majority of legal votes.”

This oath may be administered by a local justice or by any three electors, and must be “entered among the records of the sessions of the county, city, corporation, or borough.”

The “Bribery Act” which was formerly read upon these occasions is now repealed, and the “Corrupt Practices Prevention Act,” which takes its place, has no provision that it shall be read from the hustings. We have already seen that mention of the act is now made in the notice of election, and this stands in lieu of the old ceremony of reading the “Bribery Act.”

The form of the subsequent proceedings is very much at the discretion of the returning officer, who is guided by the custom of the place. The departure from local usage in these respects would, if made with unfair intent, be punished by the House of Commons, and, if it

affected the event of the election, would possibly avoid the election. The common course is, to make proclamation to the electors to proceed to the election. The candidates are then proposed and seconded in such order as the returning officer may choose. They then address the electors in the order of their nomination ; and the vote is taken either by show of hands or by sound of voice, aye or no, or by dividing into separate bodies. There is no statutory direction on this point.

If there be no more candidates than vacancies, three proclamations for more candidates should be made at short intervals. The returning officer then declares the candidates to be duly elected.

The engrossment of the return is now produced and signed. In county elections it is in the form following—

“ **This Indenture**, made in the full County of —, holden at — in and for the said county, on — the — day of —, in the — year of the reign of our Sovereign Lady the Queen, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, and in the year of our Lord 18—, between *A. B.*, Sheriff of the said county, of the one part, and *C. D.*, *E. F.*, &c., and many other persons of the county aforesaid, and electors of knights to Parliament for the said county, of the other part ;

“ Witnesseth, that proclamation being made by the said sheriff by virtue of and according to a

writ of our Sovereign Lady the Queen, directed to the said sheriff, and hereunto annexed, for the electing of two knights, of the most fit and discreet of the said county, girt with swords, to serve in a certain Parliament to be holden at the City of Westminster, on the — day of —, next ensuing : the said parties to these presents, together with the major part of the electors for the county aforesaid, present in the full county of — at — aforesaid, on the day of the date hereof, by virtue of the said writ, and according to the force and effect of divers statutes in that case made, have in the said full county of —, by unanimous assent and consent, freely and indifferently elected and chosen two Knights, of the most fit and discreet of the said county, girt with swords, to wit, — of — and — of — Esquires, to be Knights to the said Parliament, so to be holden at the day and place in that behalf hereinbefore mentioned, for the commonalty of the county of —; giving and granting to the aforesaid knights full and sufficient power for themselves and the commonalty of the same county, to do and consent to those things, which, in the said Parliament, by the Common Council of the Kingdom of our said Lady the Queen, (by the blessing of God,) shall happen to be ordained upon the affairs in the said writ specified. In witness whereof, the parties to these presents have interchangeably put their hands and seals the day, year, and place first above written.”

The form of a return for a borough varies from the above, and is usually as follows—

“This Indenture, made at the Guildhall of — the borough of *S.*, in the county of —, the — day of —, in the — year of the reign of our Sovereign Lady Victoria the First, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, and in the year of our Lord 18—; between *A. B.*, mayor of the borough of *S.*, in the county of —, of the one part; and *C. D.*, *E. F.*, &c., electors of the said borough —, of the other part;

“Witnesseth, that by virtue of a writ of our sovereign Lady the Queen to the said mayor, directed and hereunto annexed, for the election of two burgesses for the said borough, to serve in the Parliament to be holden at the City of Westminster on the — day of — next ensuing (notice being first given of the day and place as by the statute in such case made and provided is directed) they, the commonalty of the said borough, and others interested in the said election, according to the tenor of the said writ, have elected and chosen *E. F.* and *G. H.*, Esquires, to be burgesses to serve for the said borough: And do hereby give and grant to the said burgesses so chosen full power and authority for themselves and the commonalty of the said borough to do and consent to those things which at the said Parliament, by the Common Council of the realm (by the blessing of God) shall happen to be ordained. In witness whereof the said mayor to one part of these Indentures hath set his seal of office; and to the other part the said *C. D.* and *E. F.*,

and others of the commonalty and electors of the said borough have set their hands the day and year first above written."

The return should be made at once. In some places there has been a habit of opening a formal poll, and polling forty electors. This is an important injury to the candidates, since it seems to be well-established election law, that at any time while the poll is open a new candidate may be nominated. In the Nottingham case, reported in 1 Peckwell's Election Cases, 77, the Committee resolved "that John Allen, being the returning officer, acted contrary to his duty in opening a poll and proceeding to take votes for about half an hour, and until forty electors had polled, there being during that time no third candidate."

But as it is not universally the case that an election is concluded in this happy and unanimous fashion, some candidates will think it necessary to be prepared for all those engines of opposition, whereof the law has good store, which hostile lawyers can bring into play.

Declaration of Qualification. — At any time after the nomination, and before the return day of the writ, any candidate, or any two registered electors who retain their right of voting, may request the competing candidate to declare his qualification, and if this request is not complied with within twenty-four hours, the election of the candidate is void.

This is a matter of so great importance, that it may be useful to have the words of the statute before us. It depends upon the 3d, 4th, and

5th sections of the "Qualification Act," 1 and 2 Vic. c. 48. And the enactment is as follows :

"Every candidate at any election of a member or members to serve in Parliament for any county, riding, part, or division of a county, city, borough, or cinque port, as aforesaid, shall, upon a reasonable request made to him at the time of such election, or at any time before the day named in the writ of summons for the meeting of Parliament, by or on behalf of any candidate at such election, or by any two or more registered electors having a right to vote at such election, make and subscribe a declaration to the purport or effect following, such request to be in writing, and signed by the candidate or the said two or more electors, (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare, that I am, to the best of my knowledge and belief, duly qualified to be elected as a member of the House of Commons, according to the true intent and meaning of the act passed in the second year of the reign of Queen Victoria, intituled 'An Act to amend the Laws relating to the Qualification of Members to serve in Parliament,' and that my qualification to be so elected doth arise out of [*here let the party state the nature of his qualification, as the case may be; if the same ariseth out of lands, tenements, or hereditaments, let him state the barony or baronies, parish or parishes, township or townships, precinct or precincts, and also the county or counties, in which such lands, tenements, or hereditaments are situate, and also the estate in the said lands, tenements, or hereditaments, or in the rents or profits thereof, of or to which he is seised or en-*

titled ; or if the same ariseth out of personal estate or effects, let him state of what nature and where situate such personal estate or effects are, and what interest he hath in such personal estate or effects, and upon what securities and in whose names the same are vested] as hereunder set forth.'

"The said declaration shall be made before the returning officer at any election, or a commissioner for that purpose lawfully appointed, or any justice of the peace within the United Kingdom of *Great Britain and Ireland*; and the said returning officer, commissioner, or justice of the peace before whom the said declaration shall be made is hereby required to certify the making thereof, when the same shall have been made in *England or Wales*, unto the High Court of Chancery or to the Court of Queen's Bench in *England*, and when the same shall have been made in *Ireland*, unto the High Court of Chancery or to the Court of Queen's Bench in *Ireland*, within three months after the making of the same, under the penalty of forfeiting the sum of one hundred pounds, to wit, one moiety thereof to the Queen, and the other moiety thereof to the use of such person or persons as will sue for the same, to be recovered, with full costs of suit, by action of debt or information, in any of Her Majesty's Courts of Record in *Westminster or Dublin* respectively.

"No fee or reward shall be taken for administering any such declaration, or making, receiving, or filing the certificate thereof, except one shilling for administering the declaration, and two shillings for making the certificate, and

two shillings for receiving and filing the same, to be paid by the person or persons requiring such declaration to be made, under the penalty of twenty pounds, to be recovered and divided as aforesaid."

These words, "reasonable request," were unsuccessfully argued, Dundalk case, 1848, to excuse a man at a distance from home until he should have time to return home and consult his legal advisers. Mr. M'Tavish made the declaration in London eight days after the request had been made in Dundalk, but the Committee unseated him.

If, after the request, the required declaration be not made within twenty-four hours, notice may be given of the fact, and all future votes given for that candidate will be thrown away. The seat may thus be claimed by the candidate who is in the minority on the poll.

Even if the declaration has been made, a notice may be given that the candidate making the declaration is not duly qualified. In one case, a candidate, fully believing the legality of his qualification, had taken the oath which was at that time equivalent to the present declaration, but his opponents, better informed, persisted with their notice of qualification. The Election Committee decided that the votes given after the notice were thrown away, and they seated the opposing candidate. The question was one of great legal nicety, and the voters could not possibly have known that it was safer to believe their opponent's notice than their candidate's oath. (See the Belfast case, Falconer and Fitzherbert's Election Cases, 601.)

But if the request is not made until the poll is

closed (or probably until a number are polled for the candidate in the majority greater than that the candidate in the minority ever attains) then the election is only void, and a new writ goes, for the electors, having had no notice, do not lose their votes.

Every prudent candidate, therefore, will have his declaration of qualification in his pocket when he appears upon the hustings.

Appointment of agent for expenses.—The “Corrupt Practices Prevention Act” contemplates that, on the nomination day, the candidate shall appoint his agent for election expenses. Sec. 31. enacts that “every candidate shall, before or at the nomination, or as soon after as conveniently may be, declare to the election auditor in writing the name or names of his agent or agents for election expenses, who shall be appointed in writing, and that he has not appointed and will not appoint any other agent without in like manner declaring the same to the election auditor, and no other than such agents shall have authority to expend any money or incur any expenses of or relating to the election, in the name or on the behalf of the candidate; and such agents may pay any of the current expenses of the election necessary to be paid in ready money, provided that such agents shall make out, to the best of their ability, and render from time to time true and particular accounts to the election auditor of all such payments; and every such agent shall, as soon as conveniently may be after his appointment as aforesaid, make and sign the following declaration—

‘I, *A. B.*, being appointed an agent for elec-

tion expenses by [X. Y.], a candidate at this election, do hereby solemnly and sincerely declare, that I have not knowingly made, authorized, or sanctioned, and that I will not knowingly make, authorize, or sanction, any payment on account of this election, otherwise than through the election auditor, save as excepted and allowed by the 'Corrupt Practices Prevention Act, 1854.' "

On the nomination day the candidate's power of paying expenses either by himself or his agents ceases. Thenceforward the election auditor's duties come into operation.

"Sec. 25. Any candidate, and his agents by him appointed in writing, according to the provisions of this act, may, at any time before the day of nomination, pay any lawful and reasonable expenses in respect of the election which he or they shall *bonâ fide* believe fit and proper to be paid, in ready money, and the payment of which cannot conveniently be postponed; provided, that the candidate and his agents shall, upon or before the day of nomination, make out to the best of his ability, and deliver to the election auditor, a full, true, and particular account of all such payments, with the names of the persons to whom they have been made, signed by such candidate or his agents respectively, and no payment so made shall be a legal payment within this act unless such account thereof shall be duly rendered to the election auditor."

These election auditors receive a fee of ten guineas from each candidate, and a commission of two per cent. upon all payments audited. Seeing that under their supervision the expenses

of the contest for the Borough of Marybone amounted to 8022*l.* 9*s.* 10½*d.*, it is not quite easy to recognise the efficiency of this machinery. The fact, however, should be borne in mind, that from the day of nomination inclusive neither the candidate nor his agents can make any payment except for his personal expenses and the expenses of advertising in newspapers. "Personal expenses" are, by the interpretation clause, explained to mean "the reasonable travelling expenses of the candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election."

Certain other matters connected with the nomination day may here be conveniently mentioned.

Soldiers.—Formerly it was necessary, under the provisions of the 8 Geo. II. c. 30., to remove all soldiers quartered or billeted in the place of election to the distance of two miles at least one day previously to the day of election. That act, however, has been repealed by the 10 and 11 Vic. c. 21., by which it is provided, "that on every day appointed for the nomination, election, or poll, no soldier within two miles of any city, borough, town, or place, where such nomination or election shall be declared or poll taken, shall be allowed to go out of the barrack or quarters in which he is stationed, unless for the purpose of mounting or relieving guard, or for giving his vote; and every soldier so going out shall return to his barrack or quarters with all convenient speed so soon as his guard shall have been relieved or vote tendered." Soldiers

attending as the guards of Her Majesty, or any person of the Royal family, and those usually stationed or employed within the Bank of England, are excepted.

The execution of the act is provided for by directing the Clerk of the Crown in Chancery, immediately after making out the writ, to give notice thereof to the Secretary of War, who is to give notice in writing, before the election, to the general officer commanding in the district, who is to give the necessary orders in all places under his command.

Refreshment Tickets. — These are declared illegal by the twenty-third section of the "Corrupt Practices Act"—"And whereas doubts have also arisen as to whether the giving of refreshment to voters on the day of nomination or day of polling be or be not according to law, and it is expedient that such doubts should be removed: Be it declared and enacted, that the giving or causing to be given to any voter on the day of nomination or day of polling, on account of such voter having polled or being about to poll, any meat, drink, or entertainment, by way of refreshment, or any money or ticket to enable such voter to obtain refreshment, shall be deemed an illegal act, and the person so offending shall forfeit the sum of forty shillings for each offence to any person who shall sue for the same, together with full costs of suit."

Bands, ribbons, and chairing.—These are all declared to be illegal payments by the seventh section of the "Corrupt Practices Act," and the cockades are specially struck at by a penalty of forty shillings—"No candidate before, during,

or after any election, shall, in regard to such election, by himself or agent, directly or indirectly, give or provide to or for any person having a vote at such election, or to or for any inhabitant of the county, city, borough, or place for which such election is had, any cockade, ribbon, or other mark of distinction; and every person so giving or providing shall for every such offence forfeit the sum of two pounds to such person as shall sue for the same, together with full costs of suit; and all payments made for or on account of any chairing, or any such cockade, ribbon, or mark of distinction, as aforesaid, or of any bands of music, or flags, or banners, shall be deemed illegal payments within this act."

Special constables.—On the other hand, the elector is released from the obligation of keeping the peace on the nomination day. By the eighth section of the same statute, "no person having a right to vote at the election for any county, city, borough, or other place, shall be liable or compelled to serve as a special constable at or during any election for a member or members to serve in Parliament for such county, city, borough, or other place, unless he shall consent so to act; and he shall not be liable to any fine, penalty, or punishment whatever, for refusing so to act, any statute, law, or usage to the contrary notwithstanding."

These are the principal legal incidents of the nomination day. If there is no opposition, the member moves a vote of thanks to the returning officer, and departs. If the election is contested, we now enter upon another stage.

CHAPTER VI.

THE POLLING-BOOTHES.

IN contested elections, after the show of hands, the unsuccessful candidate, usually by his proposer, demands a poll. A poll, however, may be demanded by any elector. When a poll has been demanded, it is an abandonment of every thing that has been done before, and every thing anterior is not of the substance of the election, nor to be so received. (See Sir W. Scott, 1 Haggard's Consistory-Court Cases, p. 13.) When a poll is demanded it cannot be refused; having been demanded, the demand cannot be waived. The returning officer is bound to take it both by statute (7 and 8 W. III. c. 25. s. 3.) and at Common Law. Lord Coke says (4 Inst. 48), "If the party or the freeholders demand the poll the sheriff cannot deny the scrutiny." If there be any irregularity in the mode of demanding the poll, the taking of it would be a complete waiver of such irregularity. (See Tindal, C. J., 5 Ad. & El. 88.)

So soon as a poll is demanded the proceedings are adjourned, for the purpose of taking it. By section 62. of the Reform Act, amended by 16 and 17 Vic. c. 15., it is directed that the polling of counties shall commence at eight o'clock in the forenoon of the next day but two after the day of nomination, unless such next day but two should be Saturday or Sunday, and then on the Monday following.

By the 2d section of the 5 and 6 W. IV.

c. 36. the polling for boroughs is to commence at eight o'clock of the day next following the day fixed for the election, unless the day following should be Sunday, Good Friday, or Christmas-day, then on the day following the excepted day.

During the interval between the nomination-day and the day of polling the booths are erected in the respective districts; the deputies of the returning officers are also appointed and sworn—one to preside at each polling-booth; the poll-books are prepared, the poll-clerks are appointed and sworn, and the check-clerks and agents are authorized to act.

We must deal with these preparations separately.

The Polling-places for Counties.—The polling districts are directed by the Reform Act, are fixed by the Boundary Act, may be increased by the Queen in Council on the petition of Justices in Session, founded on a notice of two Justices, or ten voters (6 & 7 W. IV. c. 102.), and may be varied or suppressed by Order in Council, 16 & 17 Vic. c. 68., sections 7. and 8.

By the Reform Act, the sheriff, or his deputies, if required so to do by or on behalf of any Candidate *on the day fixed for the election*, or, if it shall appear to him expedient, shall cause to be erected a reasonable number of booths for taking the poll at the principal place of election, and also at each of the polling-places, and shall cause to be affixed on the most conspicuous part of each of the booths the names of the several parishes, townships, and places for which such

booth is allotted; and no person shall be admitted to vote except at the booth allotted for his parish, and if no booth shall be so allotted for his parish, then at any of the booths for the same district; and in case any parish or place shall happen not to be included in any of the districts to be appointed, the votes in respect of property situate in such parish or place so omitted shall be taken at the principal place of election.

By the subsequent act of 6 & 7 W. IV. c. 102. this requisition by the Candidate is rendered unnecessary. That act requires the high sheriff at every contested county election to provide as many polling-booths as will allow one for every 450 electors on the registry.

Polling-places for Boroughs.—By the 68th section of the Reform Act, the returning officer, on the requisition of any candidate, or on his behalf, or if he shall himself deem it expedient, shall cause to be erected different booths for different parishes, districts, or places, so that no greater number than 600 shall be required to poll at any one compartment; and the returning officer shall appoint a clerk to take the poll at each compartment, and shall cause to be affixed on the most conspicuous part of each of the booths the names of the several parishes, districts, and parts for which such booth is allotted. No person can be admitted to vote except at the booth allotted for the parish, district, or part wherein the property may be situate in respect of which he claims to vote, or in case he does not claim to vote in respect of property, then wherein his place of abode as

described in the register may be. In case no booth shall happen to be provided for any particular parish, district, or part, the votes of persons voting in respect of property situate there, or having their place of abode therein, may be taken at any of the booths. The votes of freemen residing out of the limits of the city or borough may be taken at any of the booths. Public notice of the situation, division, and allotment of the different booths must be given two days before the commencement of the poll by the returning officer.

London, the Universities, Monmouth, the Welsh boroughs, New Shoreham, Cricklade, Aylesbury, and East Retford, are specially provided for in this respect.

By the 5 and 6 W. IV. c. 36. these provisions are somewhat altered. The returning officer must, without any requisition, so provide that not more than three hundred electors shall be allotted to each booth or compartment, and on the requisition of any candidate, or his proposer or seconder, the booths shall be so constructed that not more than one hundred voters shall be allotted to each. But in this case the requisitioner must pay the additional expense. If this requisition be made on or before the nomination day the returning officer forthwith gives public notice of the situation of the booths, and this notice then takes place of the two-days' notice required by the Reform Act.

All polling booths are to be erected at the equal expense of the candidates (Reform Act, sec. 71.), by contract if the candidates please, if not, then by the returning officer. If the returning officer

cause the erection, " the expense to be incurred for the booth or booths to be erected at the principal place of election for any county, riding, parts, or divisions of a county, or at any of the polling places so to be appointed as aforesaid, shall not exceed the sum of forty pounds in respect of any one such principal place of election, or any one such polling place; and that the expense to be incurred for any booth or booths to be erected for any parish, district, or part of any city or borough shall not exceed the sum of twenty-five pounds in respect of any one such parish, district, or part; and that all deputies appointed by the sheriff or other returning officer shall be paid each two guineas by the day, and all clerks employed in taking the poll shall be paid each one guinea by the day, at the expense of the candidates at such election: Provided always, that if any person shall be proposed without his consent, then the person so proposing him shall be liable to defray his share of the said expenses, in like manner as if he had been a candidate: Provided also, that the sheriff or returning officer may, if he shall think fit, instead of erecting such booth or booths as aforesaid, procure or hire and use any houses or other buildings for the purpose of taking the poll therein, subject always to the same regulations, provisions, liabilities, and limitations of expense as are hereinbefore mentioned with regard to booths for taking the poll."

By the 16 and 17 Vic. c. 68. sec. 6. no poll for any place in England or Wales " shall be taken at any inn, hotel, tavern, public-house, or other premises licensed for the sale of beer, wines, or

spirits, or in any booth, hall, or room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing;" and by the Reform Act no nominations shall be made or elections held for a borough in any place of public worship.

The polling places being now erected, and duly lettered to indicate the divisions, we must now provide for their use.

Appointment of deputy returning officer.—

By the sixty-fifth section of the Reform Act the sheriff is empowered to appoint a deputy to preside at the principal place of election, and at each polling place; and by the sixty-eighth section the returning officer of boroughs, "if the booths be in different places," has the same power.

By sec. 73. of the Reform Act it is provided that every deputy of a sheriff or other returning officer shall have the same power of administering the oaths and affirmations as required by law, and of appointing commissioners for administering such oaths and affirmations as may by law be administered by commissioners, or sheriff, or other returning officer, by virtue of that or any other act, and subject to the same regulations and provisions in every respect as such sheriff or other returning officer.

The appointment had better be in writing, but any words denoting the intention to appoint will suffice. The following expresses all that is requisite.

*County of Berks.**Election of Knights of the Shire.*

I, A. B., high sheriff of the county of Berks, do hereby appoint you, C. D., of Abingdon, gentleman, to be my deputy at the forthcoming election of knights of the shire, and I appoint you to act as such deputy at the principal place of election [or at the polling booth for the district of ———]. Given under my seal of office this ——— day of ——— 1857.

A. B.

The duty of the deputy is to preside in the booth, to decide any questions upon which the poll clerks may be in doubt, to administer the bribery or the identity oath when required, to order the constables (whom the returning officers are directed by sec. 90. of the Reform Act to provide at each booth) to take into custody persons accused by the candidate's agent of personation, to receive and enter votes tendered as having been claimed before the revising barrister and rejected, and generally to exercise all the powers and duties of his principal.

It would appear to be no objection to the validity of an election that the deputies were minors.

We have already seen (ante p. 49) that the deputies are to be paid two guineas a day at the expense of the candidates.

Commissioners may also be still appointed to take the oaths that may be tendered to the voters; but under the new enactments for regulating the voting these can never be necessary, so I pass it over as an obsolete ceremony.

Preparation of poll books. So much of the Reform Act as referred to the forming of a register, has been repealed by the 6 Vic. c. 18.

The provisions which are substituted are as follows :

XLVII. And be it enacted, That the said lists of voters for each county, signed as aforesaid, shall be forthwith transmitted by the revising barrister to the clerk of the peace of the same county, and the clerk of the peace shall keep the said lists among the records of the sessions, and shall forthwith cause the said lists to be copied, and printed in a book or books, arranged with the names in each parish or township, in strict alphabetical order, according to the surnames, and with every polling district in alphabetical order, and with every parish or township within such polling district likewise in the same order; and shall, after the list for each polling district, insert a list in like alphabetical order of all persons whose names shall not appear in any of the said lists for such polling district, but who shall in manner hereinbefore mentioned have been registered by the revising barrister to vote at the polling place of such last-mentioned district; and shall in the said book prefix to every name its proper number, beginning the numbers from the first name, and continuing them in a regular series down to the last name: Provided always, that a number as aforesaid shall be prefixed to the name of every person in every such list inserted after the last list for any polling district as aforesaid; and no number, but an asterisk only, shall be prefixed to the name of the same person in the list of the parish or township in which his name originally appeared; and every such book shall be printed and arranged in such manner and form that the list of votes of and for each and every separate parish or township contained therein may be conveniently and completely cut out or detached from all the other lists of voters contained in the same book, so that all the lists for every or any polling place, or the list of every or any single parish or township, may be ready for the purposes of this act, or for sale; and the said clerk of the peace shall sign and deliver the said book or books on or before the last day of November in the then current year to the sheriff of the county, to be by him and his successors in the office of sheriff safely kept, for the purposes hereinafter and in the said recited act mentioned.

County lists to be transmitted to clerk of the peace, and to be by him copied into a book.

Clerk of the peace to sign and deliver a copy to the sheriff.

XLVIII. And be it enacted, That the lists of voters for each city or borough, signed as aforesaid, shall be forthwith delivered by the revising barchester to the town clerk of the city or borough; and the said town clerk shall forthwith cause the said lists to be copied and printed in a book; and in the said book the said lists shall be arranged, and every name numbered according to the directions aforesaid with regard to the county lists, so far as the same are applicable; and the said town clerk shall sign and deliver the said book on or before the said last day of November to the returning officer of the same city or borough, to be by him and his successors, as returning officer, safely kept, for the purposes hereinafter mentioned.

XLIX. And be it enacted, That the said printed book or books, so signed as aforesaid by the clerk of the peace or town clerk respectively, and given into the custody of the sheriff of any county, or the returning officer of any city or borough, as the case may be, shall be the register of persons entitled to vote at any election of a member, or members, to serve in Parliament, which shall take place in and for the same county, city, or borough respectively, between the last day of November in the year wherein such register shall have been made and the first day of December in the succeeding year: Provided always, that the register of elections now in force shall be the register in force until the First day of December in the year One Thousand Eight Hundred and Forty-three; and the clerk of the peace of every county, and the town clerk of every city or borough respectively shall keep printed copies of the said register for such county, city, or borough, and shall deliver such copies of such register, or any part thereof, to any person applying for the same, upon payment of a price after the rate contained in the table numbered (2) in the schedule (D) to this act annexed: Provided always, that no person shall be entitled to a copy of any part of any register relating to any parish or township without taking or paying for the whole that relates to such parish or township.

The 72d section of the Reform Act provides that the sheriff or other returning officer shall

before the day fixed for the election cause to be made for the use of each booth, or other polling place, a true copy of the register of voters, and shall under his hand certify every such copy to be true.

The poll clerks. In county elections the power of the sheriff to appoint poll clerks depends upon the 65th section of the Reform Act, which only *authorizes* him to appoint clerks to take the poll at the principal place of elections, and also at the several polling places. In borough elections the returning officer is *directed* by the 68th section of the same act to appoint a clerk to take the poll at each compartment of each booth. The poll clerks are paid a guinea a day each in England, and a pound a day each in Ireland, at the expense of the candidates.

There is no form prescribed by statute for the appointment, and it may be made either verbally or in writing. If in writing, it may be as well to designate the booth and compartment in which he is to act, but no irregularity in this respect can affect the validity of the election.

The 25 Geo. III. c. 84. sec. 7, provides that the poll clerks shall (in England and Wales) take an oath before the returning officer, or his deputy (Reform Act, sec. 73.) before beginning to take the poll. He is to swear "to take the poll truly and indifferently, and to set down the name of each voter, *and his addition, profession, or trade, and the place of his abode*, and for whom he shall poll; and to poll no person who is not sworn or put to his affirmation, when by this or any other statute any oath or affirmation now is or hereafter shall be required." The re-

gister does not now state the voter's profession, and the poll clerk has no right to ask either the voter's profession or his present state of abode. In both counties and boroughs the nature and description of the qualification is stated. There is no authority for adding to the oath, and the proper course to pursue would appear to be to follow the words of the statute, omitting the words in italics, thus :

Poll Clerks' Oath.

" I do swear that I will at this election truly and indifferently take the poll, and will set down the name of each voter, and for whom he shall poll, and will poll no person who is not sworn or put to his affirmation when, by any statute, oath or affirmation now is required,

" So help me God.

" A. B."

" The above oath was taken and subscribed the —— day of ——, A.D. 1857, before me,

" C. D.

" Deputy Returning Officer
for the Borough of ——."

Under the altered state of the law the proper oath would be—to take the poll truly and impartially, to set down the name of the voter, his number on the register, and for whom he shall poll; to register no vote until the legal questions have been answered, and the oath or affirmation lawfully tendered has been made; to faithfully keep the poll books, and to deliver them unaltered and sealed to the deputy of the returning officer as by law required. These

appear to be the only duties of a poll clerk under the present law. But the oath must of course follow the form given by the statute as nearly as possible.

This, however, is of no great practical importance, for it has been held, that even if the poll clerks are not sworn at all, the election is not thereby invalidated. The returning officer, however, would be liable to a criminal information under the act of George the Third.

So any departure from the proper or usual number of poll clerks would not destroy the election. (See *Rex* and the Lord Mayor of London 9 B. & C. 1.)

Check Clerks In counties the sheriff or under-sheriff is bound to appoint an inspector or check clerk for each candidate, to check each poll clerk (7 & 8 Will. III. c. 25. sec. 3.), and he is also bound to allow a check book for each poll clerk (18 Geo. II. c. 18. sec. 9.). The same right in cities or counties of towns is given by 19 Geo. II. c. 28.; and in boroughs having more than 600 voters the 9 Geo. IV. c. 59. directs that each compartment of the booth shall be provided with accommodation for an agent and a check clerk for each of the candidates. These matters are not mentioned in the more recent statutes; and in boroughs where there are not 600 voters, there seems to be no direct enactment in this respect. The custom, however, is universal; and I apprehend that a returning officer who should refuse fair opportunity of checking his poll clerks would be gravely censured by a Committee of the House of Commons.

Agents for detecting personation. These agents are nominated by the candidates by virtue of the 85th sec. of the 6 Vic. c. 18. The nomination must be made previous to the time fixed for taking the poll, and notice in writing of their names and addresses must be given to the returning officer or his deputy, and every such agent may then attend during the time of polling at the booth or booths for which he shall have been so appointed.

Form of Appointment.

I, *A. B.*, a candidate, at the election now pending for the borough of *Z.*, hereby appoint *C. D.*, of —, in the said borough, an agent to attend at the booth numbered 3, for the purpose of detecting personation. Dated the — day of —, A.D. 1857 (a day previous to the polling day).

A. B.

Notice of Appointment.

To the returning officer for the borough of *Z.*

I, *A. B.*, a candidate at the pending election for the borough of *Z.*, hereby give you notice that I have appointed the persons whose names and addresses are mentioned in the annexed schedule my agents to detect personation. Dated the — day of —, A.D. 1857.

A. B.

Schedule.

John Smith, No. 1, High Street, in	}	For booth No 1.
the borough of <i>Z.</i>		
Wm. Brown, No. 10, Avongate, in	}	For booth No. 2.
the said borough		

The office of these agents is one of great importance; for as there is no discretion vested in the returning officer or the poll clerks, it is only by their agency that a candidate can prevent a crowd of strangers personating all his voters, and having their votes recorded by poll clerks, who are fully aware of the fraud, but are with-

out power to prevent it. But although the office is of great importance, it is also of great delicacy, and it is well, therefore, to have at hand the exact words of the statute (6 Vic. c. 18.) which creates these agents and defines their duties.

LXXXIII. And be it enacted, That if at any election of a member or members to serve in Parliament for any county, city, or borough, any person shall knowingly personate and falsely assume to vote in the name of any other person whose name appears on the register of voters then in force for any such county, city, or borough, whether such other person shall then be living or dead, or if the name of the said other person be the name of a fictitious person, every such person shall be guilty of a misdemeanor, and, on being convicted thereof, shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

LXXXIV. And be it enacted, That every person who shall aid, abet, counsel, or procure the commission of any such last-mentioned misdemeanor shall be liable to be indicted and punished as a principal offender.

LXXXV. And for the more effectual detection of the personation of voters at elections, be it enacted, That it shall be lawful for any candidate, at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election, to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election, for the purpose of detecting personation; and such candidate shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

LXXXVI. And be it enacted, That if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy, presiding therein, that he verily believes, and undertakes to prove, that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then, and in every such case, it shall be lawful for the said returning officer, or his said deputy, and he is hereby required, immediately after such person shall have voted, by word of mouth to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Returning officers may order persons charged with personation to be taken into custody. Provided always, that nothing herein contained shall be construed or taken to authorize any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorized by this act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorized and required of him; but the said returning officer, or his deputy, shall cause the words "protested against for personation" to be placed against the vote of the person so charged with personation when entered in the poll book. Vote not to be rejected if questions answered in the affirmative.

LXXXVII. And be it enacted, That every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before two Justices of the Peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Persons charged with personation to be taken before two Justices. Provided always, that in case the attendance of two such Justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one Justice of the Peace acting as aforesaid, and such Justice is hereby authorized and required to liberate such person on his entering into a recognition, with one sufficient surety, conditioned Bail to be taken in certain cases. to appear before any two such Justices as aforesaid, at a time

and place to be specified in such recognisance, to answer the said charge; and if no such Justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged from custody: Provided also, that if in consequence of the absence of such Justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such Justices as aforesaid to inquire into the same on the next or on some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

LXXXVIII. And be it enacted, That if on the hearing of

If Justices are satisfied that the person charged has been guilty of personation, they are to commit him for trial.

the said charge the said two Justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this act, and is not in fact the person in whose name he voted, then it shall be lawful for the said two Justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognisances to appear and give evidence on such trial as in the case of other misdemeanors.

LXXXIX. And be it enacted, That if the said Justices

If Justices are satisfied that the charge is unfounded, they are to order compensation.

shall on hearing of the said charge be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf, shall not appear to support such charge before the said Justices, then it shall be lawful for the said Justices, and they are hereby required, to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay the said person so falsely charged, if he shall consent to accept the same, any sum not exceeding the sum of Ten Pounds nor less than Five Pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied, by warrant under

the hand and seal of any Justice of the Peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in any one of Her Majesty's superior Courts of Record at Westminster:

If party falsely charged accepts compensation no action to be brought. Provided always, that if the person so falsely charged shall have declared to the said Justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person, in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

From these sections it will be seen that the agent's power of proceeding to require the returning officer to give the man in custody does not commence until the man has actually voted. "Knowingly personating and falsely *assuming* to vote," which may perhaps mean tendering the false vote, is the offence. But if, notwithstanding the agent's warning, he persists, the vote must be taken.

The poll.—Having now finished and peopled the poll booths, I proceed to consider the business of the poll.

The poll lasts one day throughout England and Wales both in counties* and boroughs,†

* 16 Vic. c. 15.

† 5 and 6 Wm. IV. c. 36.

except only the Universities, where it may continue for five days.*

In boroughs the poll must open at eight in the morning and shall not be continued after four in the afternoon.

In counties the poll must open at eight in the morning and must be kept open till five in the afternoon.

When a man advances to the poll booth there are four requisites to his vote being received.

1. He must declare himself to be the same person whose name appears as (A. B.) on the register of voters.

2. That person must be a person entitled to vote at the particular booth at which the vote is tendered. [Reform Act, secs. 64 and 68.]

3. He must declare that he has not already voted at the particular booth or elsewhere at that election.

4. He must, if required by or on behalf of any candidate, swear or affirm that he is the same person whose name appears as (A. B.) on the register.

These requisites depend upon the eighty-first and eighty-second sections of the 6 Vic. c. 18., which are in these words—

LXXXI. And be it enacted, That in all elections what-

No inquiry at ever of a member or members to serve in time of election Parliament for any county, riding, parts, or except as to identity of the voter, division of a county, or for any city or borough in England or Wales, or the town of and whether he has already voted. Berwick-upon-Tweed, no inquiry shall be

* 16 and 17 Vic. c. 68. The universities were excepted from the Reform Act, and the elections for them are governed by this statute.

permitted at the time of polling as to the right of any person to vote, except only as follows, (that is to say,) that the returning officer, or his respective deputy, shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or any of them :

1. Are you the same person whose name appears as A. B. on the register of voters now in force for the county of — [or for the — riding, parts, or — division of the county of —], or for the city [or borough] of — [as the case may be] ?

2. Have you already voted, either here or elsewhere, at this election for the county of — [or for the — riding, parts, or — division of the county of —], or for the city [or borough] of — [as the case may be] ?

And if any person shall wilfully make a false answer to either of the questions aforesaid he shall be deemed guilty of a misdemeanor, and shall and may be indicted and punished accordingly; and the returning officer or the deputy, or a commissioner or commissioners to be for that purpose by law appointed, shall, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form :

“ You do swear [or affirm, as the case may be], that you Oath to be taken are the same person whose name appears as if required.

A. B. on the Register of Votes now in force “ for the County of —, or for the — Riding, parts, or “ — Division of the County of —, or for the City or “ Borough of — [as the case may be], and that you have “ not before voted either here or elsewhere, at the present “ election for the County of — [or for the — Riding, “ parts, or — Division of the County of —], or for the “ City or Borough of — [as the case may be].

“ So help you God.”

LXXXII. And be it enacted, That, save as aforesaid, it

No other oath shall not be lawful to require any voter, at to be taken.

any election whatever of a member or members to serve in Parliament, to take any oath or affirmation, either in proof of his freehold, or of his residence, age or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding; nor to reject any vote

tendered at such election by any person whose name shall be upon the register of voters in force for the time being, except by reason of its appearing to the returning officer or his deputy, upon putting such questions as aforesaid, or either of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the said questions, or either of them, or to take the oath or make the said affirmation, or to take or make the oath or affirmation against bribery; and no

No scrutiny to scrutiny shall hereafter be allowed by or before any returning officer with regard to any

vote given or tendered at any such election; any law, statute, or usage to the contrary notwithstanding.

The questions must be asked in the exact words laid down by the Act. No other condition of voting beyond answering the questions is allowed. A poll clerk may not require the voters to spell their names as they come up, nor may he inquire in what right the voter claims to vote.

The questions should be categorically answered; but where the answer was, "I should say yes," a Committee held that he ought to have been placed upon the poll.

The bribery oath mentioned in the 82nd section is abolished by the *Corrupt Practices Prevention Act*. If the man answers the two questions and takes the oath, and if the booth is his proper booth, his vote must be received. He may be given into custody for personation, as we have already seen (ante p. 59), but his vote must be entered. All that the returning officer can do, is to cause the words "protested against for personation" to be placed against his vote.

Tendered Votes.—If, after this vote is entered, another claimant to the same name and the same

qualification should arrive and claim to vote, his vote must also be entered (6 Vic. c. 18. c. 91), "distinguishing the same from the votes admitted and allowed at such election."

So, also, by section 59. of the Reform Act, any person whose name was omitted from the register, in consequence of the decision of a revising barrister, may tender his vote at any election at which such register shall be in force, stating at the time the name of the candidates for whom he tenders his vote; and the returning officer or his deputy shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed.

If the act of registering these tendered votes is a mere ministerial act, it may probably be performed by the ordinary poll clerks; but if the returning officer has any discretion (which does not appear from the act) to refuse the tender if it appears clear to him that the person claiming to vote is making a false statement as to his rejection by the barrister, then it would seem that the application must be to the returning officer or his deputy.

Refusal to answer questions.— It has been much disputed, whether, after a person has once appeared at the poll booth and has refused to make answer to the questions, or to take the oath of identity, he can return and take the oath and vote. With great respect to those who have thought differently, I cannot see the difficulty of this point. The voter appears, answers the questions, and takes the oath. What is the impediment to his vote being recorded? Something that he did some hours before? The Act

of Parliament allows of no impediment whatever. That a returning officer should be allowed to say that he will not record the vote now, because the man did some act at some former period of the day—that is to say, would not take the oath—or that he should refuse to put the questions, because they were once before put and refused, seems to be no more justifiable than it would be to take objections to the man's identity or his qualification. It is very easy to imagine cases where, from a mis-spelling or a mis-description, a man may require time for inquiry before he may be quite sure that he is the person indicated at the particular number. I cannot find that the statute gives the returning officer any such jurisdiction; for he can neither hold a scrutiny, nor ask any thing beyond the two legal questions. Those who hold that this may be done, must hold that a former refusal to answer is an enduring disqualification, and that the returning officer is the judge of this disqualification, all which is directly contrary to the act.

Tendered votes are not to be added up in the poll books.

Mistakes at the poll. — A vote once recorded cannot be altered. Up to the moment of recording the vote the voter may alter his declaration as to whom he intends to vote for: but if the vote has once been written down it cannot be altered. There have been a few perverse decisions upon this subject, but the law is now sufficiently settled by a series of recognised cases.

Where, however, the mistake has been committed by a slip of the pen of the poll clerk he is justified in correcting his error. I apprehend,

however, that this would not be so after the voter had passed from the booth; for this would open a wide door to falsification of the books by poll clerks.

If a voter vote for only one candidate, having a right to vote for two, he cannot return to the booth and vote for the other. He has "voted."

Yet in such a case, if the voter, putting his own interpretation on the word "voted," should insist upon answering the second question in the negative, it seems difficult to say that the returning officer would be justified in refusing his vote. The case would not come under the 91st section of the 6 Vic. c. 18., for that applies only where "some *other* person shall afterwards tender his vote."

If the returning officer acts *bonâ fide* in rejecting a vote, he is not punishable for a mistake in law. If he does so from malice or partiality, the voter will have an action at Common Law, the candidate for whom the vote was tendered will have a further action for a penal sum not exceeding 500*l.* (by the 76th section of the Reform Act); and the House of Commons will, according to numerous precedents, probably commit him to Newgate.

Objections by Agents.—The operation of the recent statutes would appear to have greatly restricted the duties of agents at the polling booths. Still an agent will be more effective in proportion to his knowledge of the causes of disqualification. When penalties attach to the act of voting, the agent may perhaps inform an adverse voter, who is ignorant of the law, or deter, by a warning, one who knew the law,

but trusted that his opponents were ignorant of it.

I have already mentioned the principal causes of disqualification in voters (ante pp. 7—11), but at some expense of methodical arrangement I have reserved for this place a notice of the disqualification arising from employment at the election.

Persons employed as counsel, agent, attorney, poll clerk, flagman, or in any other capacity, for the purpose of the election, are incapable of voting; that is to say, their votes would be struck off upon a scrutiny. (7 & 8 Geo. IV. c. 37.)

This disqualification does not apply to printers, who print election hand-bills, or carpenters, who erect hustings, or such like works. Sir Robert Peel, in the Evesham case, drew the distinction clearly when he said, "There is a broad distinction between the cases of messengers who are specially employed for the purpose of the election, and those classes of persons who were merely employed in their usual avocation."

There are decisions to the effect that the following persons are disqualified on account of their employment for the purpose of the election—Check-clerks; messengers, (although acting as messengers was their ordinary business;) a shower (although he acted for both parties, and was paid by both for his services); an agent, who has accepted and acted upon a retainer, although no payment was made; a paid agent, although he vote for another candidate.

On the other hand, there are decisions that

the following persons are not disqualified—A town-clerk, who receives a customary gratuity from each of the candidates; bell-ringers, in the exercise of their ordinary employment as bell-ringers; persons employed, under the direction of the returning officer, to erect the hustings; constables employed by the corporation; persons who, after they had voted, received seven shillings each to assist as pages at the chairing, but without any previous stipulation; agents who act without promise or expectation of reward.

As no punishment attaches to these disqualified persons giving their votes, a greater degree of care will be required in the agent than with regard to those persons in Government employ, where the offence is visited by grievous penalties.

The agent for personation acting at the poll booths must of course be a man of great local information; but as he cannot keep a single name off the poll book, his utility will mainly consist in gathering proof for a future scrutiny before the Committee; or in collecting such information as may enable his principal to calculate whether a petition could be supported.

There is one duty, however, which is of extreme importance. If it should come to the knowledge of the agent that the opposing candidate has, either by himself or his agent, been guilty of bribery, treating, or undue influence, or that he is, for any reason, disqualified from being elected, he should take immediate means to make this fact public; should give notice to every voter coming to the poll that his vote will be

thrown away if he vote for the disqualified candidate; and should take note of all those voters who vote for him after such notice.

On the other hand, great care is required not to act on false information: for if such notice should be given, and it should be proved that it influenced any electors, and if the agent's principal should obtain a majority, he would, in all probability, be unseated if he failed to prove the facts stated in his notice.

The advantage of giving notice is, that the unsuccessful candidate at the poll thereby gains the seat, instead of merely voiding the election.

Adjournment of Poll.—It is part of the duty of the returning officer to take proper measures for securing order during the election. For this purpose he is directed by statute to have a sufficient number of constables at the hustings and poll-booths; and it has been declared to be not only within his power, but within his duty, to order into custody any person who disturbs the proceedings, and to direct him to be carried before a magistrate. (See *Spilsbury v. Micklethwaite*, 1 Taunt. 146.)

But as excitement will sometimes rise above the power of constables to deal with it, the law has provided that in certain cases the proceedings may be adjourned from day to day until the obstruction ceases.

VIII. That where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceedings shall consist of the nomination of candidates, or of the taking the poll, the sheriff or other returning officer, or the lawful deputy of any returning officer, shall not

Adjournment of nomination or of poll in case of riot (a).

for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination or the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the nomination or with the taking the poll, as the case may be, at the place or places at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling at such election, within the meaning of this act; and whenever the poll shall have been so adjourned by any deputy of any sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and the poll-books delivered or transmitted to such sheriff or other returning officer, any thing hereinbefore or in any other statute to the contrary notwithstanding: Provided always, that this act shall not be taken to authorize an adjournment to a Sunday; but that in every case in which the day to which the adjournment would otherwise be made shall happen to be a Sunday, Good Friday, or Christmas-day, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made.

If the returning officer should adjourn the poll upon light grounds, he will upon complaint from the Candidate be censured by the House.

Close of the Poll.—At five o'clock in counties, and at four o'clock in boroughs, the poll is closed. The returning officer still has the same power of closing the poll (in boroughs) before the last

hour for keeping it open which he had before the passing of the Reform Act. Practically, however, this reservation is now of no importance. No prudent returning officer will close the poll before four o'clock.

If the poll should be closed before the legal hour it cannot be re-opened. In case of riots the proper course is, as we have seen, to adjourn it.

When the poll is adjourned there is no statutable provision for the custody of the poll books; but from the analogy of the directions of the Reform Act, when the poll lasted two days, it is almost certain that a Committee would hold that they ought to be sealed up by the poll clerks, and publicly delivered to the deputy returning officers.

Upon the close of the poll (sections 65. and 68. of the Reform Act), the poll clerks are to inclose and seal the poll books and publicly deliver them to the returning officer, or his deputy, presiding at the poll, who shall give a receipt for them; and every deputy so receiving them shall deliver them to the returning officer, who shall keep them in his custody until the declaration.

CHAPTER VII.

DECLARATION OF THE POLL.

AFTER the final close of the poll in counties (section 65. of the Reform Act), the sheriff or under-sheriff receives and keeps all the poll books unopened until the re-assembling of the court on the day next but one after the close of the poll, unless that day shall be Sunday, and then on the Monday, when he shall openly break the seals, and cast up the number of votes as they appear on the books, and shall openly declare the state of the poll, and make proclamation of the members chosen, not later than two o'clock of the afternoon.

In boroughs the same course is pursued by the returning officer (section 68. of the Reform Act), except that the declaration is to be made on the next following week-day; and the returning officer may, if he think fit, declare the final state of the poll, and proceed to make the return immediately after the poll has been lawfully closed.

If the votes should happen to be equal, the returning officer, in England, Wales, and Scotland, makes a double return: in Ireland he has himself the casting vote.

Where, from any accident, the poll books in the hands of the returning officer are imperfect, and he has reason to believe that the missing poll books, or a correction of the imperfections in the poll books, would alter the result, he may make a double return.

If the returning officer count up the tenders as well as the votes it is a false return.

The case of the death of the returning officer pending the election does not seem to have been provided for (the 17th and 18th Vic. c. 57. only provides for there being no returning officer when the writ is issued). But it would appear, from analogy to the Irish practice, that the first deputy might make the return.

If the sheriff go out of office pending the election the new sheriff will make the return, with an indorsement stating the fact.

Without a proper return the member cannot take his seat.

The return must be signed by the returning officer, but the signature of the electors, although usual and proper, would appear to be not absolutely necessary.

We have already seen that the form of the return is an indenture, tacked to the writ upon which is indorsed a reference to such indenture. (See forms *ante*, p. 33.)

After a return has been once made no one can alter it. The House must deal with it.

If any returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned (that is, who has the majority of votes on the poll) for any place in Great Britain, such person may, in case it shall have been determined by a Select Committee that such person was entitled to have been returned, sue the returning officer, and recover double the damages he shall sustain, together with full costs. 11 and 12 Vic. c. 98. s. 103.

Transmission of Poll books to Clerk of the Crown.—After the declaration the returning officers shall tender the poll books to the candidates, to receive their respective seals; and, if they decline, shall indorse a memorandum of that fact, and, as soon as possible after the declaration, he shall deliver the poll books so signed to the Clerk of the Crown in Chancery, or shall deliver them to the postmaster of the place where the poll has been declared, who shall give a receipt, stating the time of the delivery, and shall keep a duplicate of the receipt, signed by the returning officer. And the postmaster shall despatch the books by the first mail to the General Post-Office, and the Postmaster-General shall immediately convey them to the Crown Office, and receive a receipt, stating the time of delivery, and the Clerk of the Crown Office shall register the time of receipt. The returning officer shall also advise the Clerk of the Crown of the transmission of the poll books through the Post. 6 Vic. c. 18. sec. 93.

CHAPTER VIII.

CORRUPT PRACTICES.

CORRUPT practices at elections are now by statute declared to be *Bribery, Treating, and Intimidation.*

Bribery.—The statutable definition of bribery may be thus epitomized.

The act (17 and 18 Vic. c. 102.) recognises two classes of bribery cases.

The first class is punishable as a misdemeanor, and *also* with a forfeiture of 100% and full costs to any one who will sue.

The second class is punishable as a misdemeanor, and *also* with a forfeiture of 10% and full costs to any one who will sue.

Individuals of either class are incapable of being for ever afterwards placed upon a registry of voters.

FIRST CLASS.

A person is guilty of bribery,

1. If he give, or offer, or promise, any valuable consideration to anybody with a view to induce a voter to vote or refrain from voting, or on account of his having voted or refrained from voting.

2. If he give, or promise to procure, or to endeavour to procure, any office, place, or employment for any similar object.

3. If he give, lend, or promise, to any person, with a view to induce that person to procure, or endeavour to procure, the return of any person or the vote of any voter.

4. If, in consequence of any gift, &c., he shall engage or endeavour to procure a return or votes.

5. If he shall pay money with intent that it shall be spent in bribery, or shall repay money so spent.

SECOND CLASS.

A person is also guilty of bribery,

1. If, being a voter, he receive, or agree for any valuable consideration for voting, or agreeing to vote, or refraining or agreeing to refrain from voting.

2. If he shall, after any election, receive any valuable consideration on account of any person having voted, or refrained, or for having induced any other person to vote or refrain.

This, however, is only a statement in popular language of the intent of the legislature. The definitions themselves are elaborated with the hope of including every shift and evasion under which a purchase or sale of votes may be disguised.

II. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly—

Bribery defined. 1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election :

2. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure, any office, place, or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election :
3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election :

4. Every person who shall upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election :
5. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay, or cause to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election :

And any person so offending shall be guilty of a misdemeanor, and in *Scotland* of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of one hundred pounds to any person who shall sue for the same, together with full costs of suit: Provided always, that the aforesaid enactment shall not extend, or be construed to extend, to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

III. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly—

- Bribery further defined.
1. Every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment for himself, or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election :
 2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at any election :

And any person so offending shall be guilty of a misdemeanor, and in *Scotland* of an offence punishable by fine and imprisonment, and shall also be liable to forfeit the sum of ten pounds to any person who shall sue for the same, together with full costs of suit.

Penalty.

These definitions very much enlarge the scope of the old Bribery Acts.

The *offer* of a bribe is now for the first time made bribery: *asking* for a bribe remains, as before, no offence.

A very common method of obtaining influence, in a borough, was by lending money at interest to the poorer voters. This had been reported upon by several Committees as an "insidious and demoralizing practice," and as being "more enduring and less costly than ordinary bribery." The word "loan" in the definitions now meets this class of cases.

When candidates had promised to "use their influence" towards procuring situations, the words of former Bribery Acts did not reach the offence; the words "endeavour to procure" are directed against this phase of bribery.

Payments made after an election, without any proof of a corrupt previous agreement, were generally mentioned by Committees as objectionable practices, but required the act of 5 & 6 Vic. c. 102. to declare them bribery. The new definition strengthens the provisions of that act by extending its operation to all the elector's relations, whether of kin or acquaintance.

There is no limitation as to time in the new act. Actions and prosecutions are indeed limited to one year after the act done; but it would seem that if a sitting member should, in the third, fourth, or fifth year of his sitting, seek to perpetuate his influence with a view to his re-election by largesses among his constituents, these acts may all be proved against him at the next election. So also a man who is looking to

a future candidature must have a care lest indiscreet acts of kindness may have the colour of bribery reflected upon them by the after contest.

Payment of rates to enable persons to register, and payment of the bills of a former election, will now be clearly within the statute.

Wagers are not mentioned in the act. The old rule, therefore, will hold. If the wager was *bond fide* made between two persons who took that English method of manifesting their confidence in their own judgment, the wager is harmless: if it was made with a view to influence the vote of one of the wagers, it was, under colour of a wager, "a promise of money to induce a voter to vote." The character of the transaction must be judged by the Committee or the jury, according to the circumstances of the case: just as killing a man, or signing another man's name to a deed, may, according to attendant circumstances, be acts of duty or atrocious crimes.

Treating is the corruptly contributing towards meat, drink, entertainment, or provision, in order to be elected. What entertainment or provision may mean, apart from meat and drink, it is not easy to say. If "entertainment" is used in its etymological sense, receiving the electors in a public room at a public meeting would be embraced by it; if in its popular sense, a humorous speech from the hustings, or a band of music, would fall within its scope. Probably these words are only remnants of that old bad system of drawing Acts of Parliament where the draftsman, afraid of committing himself to a precise and distinct expression of his intention, attempted

to cover up all interstices by a general term. There seems to be no good reason why treating should not (as it did at Common Law) fall under the general definition of bribery; and "valuable consideration" be made to extend to money's worth of every description.

The words of the act are as follow :

IV. Every candidate at an election, who shall corruptly
 Treating de- by himself, or by or with any person, or by
 fined. any other ways or means on his behalf, at
 any time, either before, during, or after any
 election, directly or indirectly give or provide, or cause to be
 given or provided, or shall be accessory to the giving or pro-
 viding, or shall pay, wholly or in part, any expenses incurred
 for any meat, drink, entertainment, or provision to or for any
 person, in order to be elected, or for being elected, or for the
 purpose of corruptly influencing such person or any other
 person to give or refrain from giving his vote at such election,
 or on account of such person having voted or refrained from
 voting, or being about to vote or refrain from voting, at such
 election, shall be deemed guilty of the offence of treating, and
 shall forfeit the sum of fifty pounds to any
 Penalty. person who shall sue for the same, with full
 costs of suit; and every voter who shall corruptly accept or
 take any such meat, drink, entertainment, or provision, shall
 be incapable of voting at such election, and his vote, if given,
 shall be utterly void and of none effect.

I have already, in treating of the proceedings on the nomination day (ante p. 43), cited a section of the same act, which declares that giving refreshment to voters on the day of nomination or polling is illegal. The difference between the treating section and the refreshment is this—in the refreshment section the word "corruptly" is omitted, and the penalty is directed against all mankind. If the treat be given by the candidate or his agent, or with the candidate's connivance, the higher penalties

attach, and the disqualification takes place. If the refreshment be given without corrupt intention, or if the person impeached in respect of the transaction be not the candidate, then the forfeiture of forty shillings only is incurred.

It would appear, from the definition in the fourth section, that only a candidate can be guilty of treating. His friends and agents, acting without his authority or complicity, may, as I read the act, open all the houses in the county or borough on any days except the nomination and polling days, without incurring any penalty under this act, and may continue them open on the nomination and polling days at the expense of a fine of forty shillings.

But if this should be done, and the candidate should see symptoms of the fact, complicity would of course be presumed.

The manner in which these provisions against treating are framed leave open wide opportunities for the action of zealous friends, who act without the knowledge of the candidate or the wish for repayment.

The same may be said of the prohibitory section against cockades and bands. The penalties are directed only against the candidate and his agents.

It is true, that by the 24th section of the Corrupt Practices Act, any volunteer paying money with a view to promote an election of *any person*, unless under the authority of the election auditor, shall forfeit 50%. But the action to recover this 50% is so fenced round with difficulties, that no ordinary informer would be likely to commit himself to the hazard of such a proceeding.

This is the section —

XXIV. No person shall pay or agree to pay any expenses of any election, or any sum of money what-
 pay expenses of elections, except ever, in order or with a view to procure or
 to Candidate or promote the election of any person to serve
 Election Auditor. in Parliament, save to the candidate at such
 election, or to or under the authority of the election auditor,
 other than as excepted and allowed by this act; and every
 person who shall pay or agree to pay any such expenses or
 money as aforesaid, save as aforesaid, shall become liable to a
 penalty of Fifty Pounds, and of double the money so paid or
 agreed to be paid, to be recovered in an action of debt by any
 one who shall sue for the same: Provided, that if upon the
 trial of any action to recover any such penalty or penalties it
 shall appear to the judge who shall try the same that any such
 payment shall have been made or agreed to be made without
 any corrupt or improper intention, such judge may, if he shall
 think fit, reduce such penalty or penalties to any sum not
 less than Forty Shillings, and may also, if he shall think fit,
 direct that the plaintiff shall not be entitled to costs of such
 action: Provided also, that no expenses of or relating to the
 registration of electors, and no subscriptions or contributions
bonâ fide made to or for any public or charitable purpose,
 shall be deemed election expenses within the meaning of this
 act: Provided also, that in any action to recover any penalty
 under this act it shall be lawful to the court in which such
 action shall be brought or any judge thereof, if they or he shall
 think fit, to order that the plaintiff in such action shall give
 security for costs, or that all proceedings therein shall be
 stayed.

Thus the informer in such cases may be obliged to give security for costs—must pay costs if he do not succeed in proving his case—and, if he do prove his case, may have to pay his own costs, and recover only forty shillings if the judge should be of opinion that the money was not expended with a corrupt intention.

Voters receiving meat, drink, entertainment, or provision, *given corruptly*, are incapacitated to vote, and their votes would be struck off upon a

scrutiny, and rejected even after by the revising barrister. But voters who receive meat or drink, either not corruptly given, or not corruptly given by the connivance of the candidate, are not thereby liable either to disqualification or punishment, unless, indeed, this act should, by a strained construction of the statute, be brought within the definition of bribery.

Undue influence.—Infliction or threat of violence or of loss, either before or after voting, kidnapping, or detention by fraudulent contrivance, then, are the acts comprehended within the definition of undue influence.

Non-voters are punishable for this offence with fine and imprisonment, and forfeiture of 50*l.* to any person who will sue. Candidates are punishable with fine and imprisonment and forfeiture of 50*l.*, and also with disqualification from sitting for the same place in the same Parliament.

Voters are punishable with the fine, imprisonment, and forfeiture, and also with *perpetual* disfranchisement. The words of the act upon this subject are these—

V. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make, use of, or threaten to make use of, any force violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail

Undue influence
defined.

upon any voter either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanour, and in *Scotland* of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit.

Penalty.

General disqualifications for bribery, treating, and undue influence. In addition to the particular penalties already noticed, the following sections provide disqualifications—somewhat unequally meted out, be it observed—against candidates and voters—

CANDIDATES.

XXXVI. If any candidate at an election for any county, city, or borough shall be declared by any Election Committee guilty, by himself or his agents, of bribery, treating, or undue influence, at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence.

Candidate declared guilty of Bribery incapable of being elected during Parliament then in existence.

VOTERS.

VI. Whenever it shall be proved before the revising barrister that any person who is or claims to be placed on the list or register of voters for any county, city, or borough, has been convicted of bribery or undue influence at an election, or that judgment has been obtained against any such person for any penal sum hereby made recoverable in respect of the offences of bribery, treating, or undue influence, or either of them, then and in that case such revising barrister shall, in case the name of such person is in the list of voters, expunge the same therefrom, or shall, in case such person is claiming to have his name inserted therein, disallow such claim; and the names of all persons whose names shall be so expunged from the list of voters, and whose claims shall be so disallowed, shall be thereupon inserted in a separate list, to be entitled "The list of persons disqualified for bribery, treating, or undue influence," which last-mentioned list

Names of offenders to be struck out of register, and inserted in separate list.

shall be appended to the list or register of voters, and shall be printed and published therewith, wherever the same shall be or is required to be printed or published.

I must not omit to observe that a man is not necessarily morally guilty, either of bribery or treating, because a Committee find him so to be. If his agent should bribe or treat in express opposition to the candidate's desire and instructions, the candidate will still be declared by a Parliamentary Committee to have been guilty of bribery or treating by his agents.

This is not so in a court of law. To convict, or to recover penalties for bribery or corrupt treating, the candidate himself must be connected with the corrupt act. The law of Westminster Hall, differing from the law of the Palace of Westminster, does not suffer that a man acting for another under a general power given for a lawful purpose, shall commit crimes under the colour of that general authority, and shall commit his principal to the consequences of such crimes.

The Parliamentary law has, however, been found very necessary for Parliamentary purposes, whether it is less so now that the alterations in the law of evidence have allowed the candidates to be examined before the committee, time must yet show.

In reference to prosecutions under the Corrupt Practices Act, it will be useful to have at hand the following sections :

IX. The pecuniary penalties hereby imposed for the Penalties, how offences of bribery, treating, or undue influence respectively shall be recoverable by action or suit by any person who shall sue for the same in any of Her Majesty's Superior Courts at *Westminster*, if the

offence be committed in *England or Wales*, and in any of Her Majesty's Superior Courts in *Dublin* if the offence be committed in *Ireland*, and in or before the Court of Session if the offence be committed in *Scotland*, and not otherwise.

X. It shall be lawful for any Criminal Court, before which any prosecution shall be instituted for any offence against the provisions of this act, to order payment to the prosecutor of such costs and expenses as to the said court shall appear to have been reasonably incurred in and about the conduct of such prosecution: Provided always, that no indictment for bribery or undue influence shall be triable before any Court of Quarter Sessions.

XI. For the more effectual observance of this act, every Returning officer returning officer to whom the execution of any writ or precept for electing any member of election, or members to serve in Parliament may appertain or belong shall, in lieu of the proclamation or notice of election heretofore used, publish or cause to be published such proclamation or notice of election as is mentioned in Schedule B. to this act, or to the like effect.

XII. In case of any indictment or information by a private prosecutor for any offence against the provisions of this act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which such judgment shall be given.

XIII. It shall not be lawful for any court to order payment of the costs of a prosecution for any offence against the provisions of this act, unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance, with two sufficient sureties, in the sum of two hundred pounds (to be acknowledged in like manner as is now required in cases of writs of certiorari awarded at the instance of a defendant in an indictment), with the conditions following ; that is to say, that the prosecutor shall con-

duct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

XIV. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless
Limitation of actions. of some prosecution, action, or suit for the offence committed shall be commenced against such person within the space of one year next after such offence against this act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such writ or other process shall have issued; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

Travelling Expenses. The act is silent as to travelling expenses. Upon this subject it is only safe to say that supplying railway tickets or other conveyance to all electors who may apply for them for the purpose of coming up to the poll and returning, and without making any inquiry or condition as to how the individuals propose to vote, would not be illegal. At the Marylebone election no less a sum than 592l. 6s. 11d. was paid by the election auditor for these purposes.

CHAPTER IX.

AGENCY.

FROM what we have already seen of the responsibility incurred by candidates by the acts of agents, it will be obvious that it is very important to know how a person acquires the character of agent to a candidate.

Of course the principal agents of a candidate are well known. He usually has at least one solicitor acting under retainer. His agent for election expenses has been formally appointed and sworn; and his agents to detect personation have likewise been openly nominated. But a man may be sufficiently an agent to make his principal responsible to the extent of losing his seat without holding the ostensible office of agent. In cases of bribery, the bribery may be proved first and the agency afterwards, so that frequently the very circumstances of the corrupt act tend to show the authority of the person who commits it. In treating, however, the proof of agency must be first given.

A declaration by the candidate, or by his proved agent, that certain persons are acting for him, will show those persons to be agents; but declarations by persons that they are agents for the candidate, are no proof of the fact.

Making arrangements about, and payments for, the hustings' expenses, is strong proof of agency. So auditing bills, especially if reference has been made to the auditor by the candidate, would fix a man as an agent. "Bring-

ing the candidate down," taking the chair at a meeting of his friends, and claiming a right to be on the hustings as agent of the candidate, have been held sufficient.

But canvassing in company with the candidate, being a member of the committee, being one of a club of voters which invited the candidate to stand, employment for the express purpose of paying non-resident voters, have all been held to be insufficient to prove such a general agency as to make the candidate responsible for illegal acts.

A review of the multifarious cases upon this subject only shews that it is impossible to deduce from them any definite rule. The committee will be governed to some extent by precedents, such as those I have alluded to, but they will in each instance form their conclusion from the number and weight of the circumstances before them.

CHAPTER X.

EXPENSES OF CANDIDATES.

"A CANDIDATE at an election," said Lord Ellenborough in the case of *Morris v. Burdett*, (1 Camp. N. P. 221.), "is liable to no expense except such as the statute law casts upon him, or he takes upon himself by his express or implied consent." In that case the high bailiff of Westminster demanded 150*l.* as the legal expenses of his office; and in the subsequent case of *Walthen v. Sandys* (2 Camp. 640.) the Sheriff

of Gloucestershire's demand for an election, at which there was no poll, amounted to 1493*l.* 14*s.*

Several statutes have now marked out, within narrow limits, what a candidate is obliged to pay: that is to say:

The polling booths, either according to contract, or at a sum not exceeding 40*l.* for each polling place in counties, and 25*l.* for each parish, district, or part in boroughs (Reform Act, sec. 71.).

The returning officers' deputies at two guineas each.

The poll clerks at one guinea each.

Check clerks—remuneration not fixed by statute.

These expenses are divided equally among the candidates.

There is no legal liability in respect of constables, commissioners to take oath of identity, indentures of return or other expenses, incident to the mere exercise of the duty of holding the county and making the return.

To this must be added the liability of a candidate to pay any extra expense occasioned by his requiring sufficient booths to allow the arrangement that only a hundred electors shall poll at each booth (5 & 6 Will. IV. c. 36. sec. 4.).

The expense of the election auditor is 10*l.* 10*s.* to each candidate, and two per cent. upon the money paid through his hands.

These are the expenses to which a candidate becomes liable upon accepting the position of candidate: that is to say, when he demands a poll. It has been held, that up to that time he

incurs no liability; although the returning officer may have made preparations and paid for polling booths in reliance on the candidate's intention of proceeding to the poll (*Muntz v. Sturge*, 8 M. & W. 302.).

With a view to meet this inconvenience, a prudent returning officer will take previous direction from the candidates. We learn from the case of *Morris v. Burdett* that the high bailiffs of Westminster were accustomed to obtain signatures to the following form of express promise.

"To A. B., Esq., high bailiff of the City and Liberty of Westminster.

"We, whose names are hereunto subscribed, candidates to serve in Parliament at the election for the City and Liberty of Westminster, do hereby authorise and desire the said high bailiff, or his deputy, to find and provide sufficient clerks, porters, &c., and also to find and provide a table for the high bailiff, his deputy, and officers (the charge of which not to exceed ten guineas per day), and to take every necessary step for the conducting and ordering the said election, until two candidates shall be returned by a majority of electors of the said city and liberty; and we do hereby promise and agree to pay to the said high bailiff, or his deputy, all expenses of the said election. Witness our hands, &c."

If a candidate be proposed without his consent, the person proposing him is liable to pay his nominee's share of the returning officer's charges (*Reform Act*, sec. 71.).

But although these are the only expenses

imposed by the law, these are not the only legal expenses of an election.

First. There are the personal expenses of the candidate. It has been supposed that the case of *Grant v. Guinness*, reported 25 L. J. R. C. P. 68., decides that the expenses of agents may be made part of these personal expenses; but this supposition is founded upon an erroneous reading of that case.

Secondly. The payments for advertisements in newspapers, whereof a full account is to be sent in to the election auditor as soon as possible.

Thirdly. Ready-money payments for current expenses, made before the nomination day, whereof an account is to be sent into the election auditor on or before the day of nomination.

Fourthly. Payments made or levied under any judgment, which, if the candidate pay, he must send a copy or certificate of the judgment to the election auditor, and a statement of the sums paid or levied. These payments may be made by the candidate himself or his general agents.

Fifthly. Bills sent in within one month (28 days) after the election; or in case of the creditor's death within that time, within one month after probate or administration. If the bills be not sent in within the appointed time, and if they be not delivered to the candidate or his agent (not being simply his agent for election expenses, but his agent for receipt and transmission of bills,) the debt is cancelled, unless indeed the candidate be absent from the kingdom, and no agent for receiving bills be

appointed, when the time will run till one month after his return.

The payment must now be through the election auditor, otherwise it will be an illegal payment. The liabilities attaching to an illegal payment are, forfeiture of double the amount of the payment made, and a further penalty of 10%.

The bills so sent in are transmitted by the candidate or agent to the election auditor, with instructions either to dispute or pay them. Thus the candidate, either by stress of law, or by his direct sanction, authorizes every payment made through the election auditor.

What these may be, will sufficiently appear from the abstract of the election auditor's accounts at the last Marylebone election.

Marylebone Election Expenses.

	Ebrington.				Bell.			
Advertisements	593	4	0	..	305	11	0	
Agents for Districts . . .	1067	2	5	..	196	19	1	
Canvassers, Messengers, Clerks,								
Bill Posters, &c. . . .	749	3	4	..	634	8	6	
Committee Rooms	278	3	7	..	251	9	1	
Conveyances, Cabs, &c. . .	365	8	6	..	226	18	5	
Inspectors of Books . . .	56	1	0	..	45	12	0	
Postages, Printers, Sta-								
tionery, &c.	1448	0	8	..	886	3	3½	
Returning Officer	375	0	0	..	375	0	0	
Election Auditor	9	14	0	..	7	4	0	
	<hr/>				<hr/>			
	4941	17	6	..	2929	5	4½	
Election Auditor, fee and								
commission	94	16	0	..	57	11	0	
	<hr/>				<hr/>			
	£5035	13	6	..	2986	16	4½	

The section of the Corrupt Practices Act under which the election auditor is appointed, has already been given (ante p. 22). I now

subjoin those sections of the act which define his duties, and confine the expenditure of the candidates to such bills as he may pay and publish to the world.

I may add, however, that when the candidate is not present at the election, his proposer and seconder may agree to pay lawful expenses, and shall be liable to pay them to the election auditor; and, further, that the election auditor is a mere agent for registration and publicity, and has no power to decide as to the propriety or impropriety, legality or illegality, of the payments he makes and registers and publishes.

XVI. All persons, as well agents as others, who shall have any bills, charges, or claims upon any candidate for or in respect of any election, shall send in such bills, charges, or claims within one month from the day of the declaration of the election to such candidate, or to some authorized agent of such candidate acting on his behalf, otherwise such persons shall be barred of their right to recover such claims, and every or any part thereof: Provided always, that in case of the death within the said month of any person claiming the amount of such bill, charge, or claim, the legal representative of such person shall send in such bill, charge, or claim within one month after obtaining probate or letters of administration, or confirmation as executor, as the case may be, or the right to recover such claim shall be barred as aforesaid.

XVII. Every candidate shall, by himself or his agent in that behalf, within three months after the day of the declaration of the election, or within two months after any bill, charge, or claim has been sent in by the legal representative of any deceased creditor, as herein-before provided, send in to the election auditor for payment all such bills, charges, or claims (except as hereinafter excepted) as have been sent in to such candidate within the one month herein-before specified from the day of the declaration of the elec-

tion, or after the granting of probate or letters of administration, or confirmation as executor, as the case may be: Provided always, that the candidate shall, by himself or his agent as aforesaid, at the time of his sending in any such bill, charge, or claim, state to the election auditor whether he admits the whole amount of such bill, charge, or claim, or if not the whole then how much thereof, if any, he admits to be correct: Provided also, that in case of the wilful default of the candidate, by himself or his agent as aforesaid, in sending in all such bills, charges, or claims, or in making such statement at the time of sending in such bills, charges, or claims, he shall be liable to a penalty of twenty pounds, and to a further penalty of ten pounds for every subsequent week of wilful default or neglect in sending in all such bills, charges, or claims, or in making such statement, to be recovered by any person who will sue for the same, together with full costs of suit: Provided always, that in case any such candidate shall be absent from the United Kingdom at the time of such election, he shall send in to the election auditor for payment any such bills, charges, or claims as aforesaid within one month after his return to the United Kingdom, which shall be of the same force and effect as if the same had been sent in as herein provided.

XVIII. No payment of any bill, charge, or claim, or of any money whatever, for or in respect of any election, or the expenses thereof, (except as herein excepted,) shall be made by or by the authority of any candidate, except by or through such election auditor, and any payment made by or by the authority of any candidate otherwise than as herein provided shall be deemed and taken to be an illegal payment, and upon proof thereof such candidate shall forfeit the sum of ten pounds, with double the amount of such illegal payment, and full costs of suit, to any person who will sue for the same: Provided always, that it shall be lawful for any candidate, by himself or his agent, to name any banker through whom alone such bills, charges, or claims, or money, as aforesaid shall be paid by the election auditor, and in that case the election auditor shall pay such bills, charges, and claims by cheques drawn on such banker, to be countersigned by the candidate, or some person on his behalf specially appointed for that purpose.

XIX. If the election auditor, by the authority of any candidate, tenders or offers to pay any sum Tender and payment into court by election auditor. in respect of any bill, charge, or claim sent in as hereinbefore provided, such tender shall be taken for all purposes to be the tender of such candidate, and may, in any action or other proceeding brought against such candidate to recover the amount of such bill, charge, or claim, be pleaded as such, or otherwise be made available according to the proceedings of the court in which such action or other proceeding is brought or carried on; and if such plea is pleaded, or if it shall be deemed advisable for any other reason to pay money into court in any action or other proceeding brought against a candidate in respect of any liability alleged to have been incurred by him at such election, the election auditor may, at the request of the candidate, and by leave of any one of the judges of the Superior Courts of Common Law at *Westminster*, or of any one of the judges of Her Majesty's Superior Courts at *Dublin*, or of any one of the judges of the Court of Session in *Scotland*, as the case may be, pay into court the sum required; and such payment into court by the election auditor shall, for the purposes of such action, be deemed and taken to be and may be pleaded as payment into court by the candidate himself: Provided always, that on any issue or hearing in reference to any such tender or payment of money into court, it shall not be necessary to prove the appointment of the election auditor.

XX. Nothing in this act contained (except as herein specially provided) shall be taken to limit the Copy of judgment and statement of payments made in satisfaction to be sent to auditor. right of any creditor to bring any action or otherwise to proceed against a candidate for or in respect of any expenses connected with the election; and if in any such action or proceeding final judgment be obtained against the candidate, such candidate shall forthwith send to the election auditor a copy or certificate of such judgment; and when and as the monies recovered by the said judgments, or any part thereof, shall be paid or satisfied by such candidate, or shall be obtained under or by virtue of any execution, the said candidate shall thereupon forward to the election auditor a statement of the monies so paid or obtained in respect of such judgment.

XXI. No candidate shall be allowed to compound or settle any action or other proceeding brought against him in respect of any expenses alleged to have been incurred by him in or about the election, or to confess judgment in such action or proceeding, without the consent of the election auditor.

XXII. The personal expenses of any candidate, and the expenses of advertising in Newspapers with reference to any election, shall be defrayed by the candidate himself, or by his authority, but a full and true account of the sums so paid in respect of the said advertisements shall, as soon as conveniently may be, be made out to the best of his ability, and rendered to such election auditor by such candidate, and the amount of such account shall be included in the general account of the expenses incurred at any election to be made out and kept by such election auditor as hereinafter provided.

XXIV. No person shall pay or agree to pay any expenses of any election, or any sum of money whatever, in order or with a view to procure or promote the election of any person to serve in Parliament, save to the candidate at such election, or to or under the authority of the election auditor, other than as excepted and allowed by this act; and every person who shall pay or agree to pay any such expenses or money as aforesaid, save as aforesaid, shall become liable to a penalty of Fifty Pounds, and of double the money so paid or agreed to be paid, to be recovered in an action of debt by any one who shall sue for the same: Provided, that if upon the trial of any action to recover any such penalty or penalties it shall appear to the judge who shall try the same that any such payment shall have been made or agreed to be made without any corrupt or improper intention, such judge may, if he shall think fit, reduce such penalty or penalties to any sum not less than Forty Shillings, and may also, if he shall think fit, direct that the plaintiff shall not be entitled to costs of such action: Provided also, that no expenses of or relating to the registration of electors, and no subscriptions or contributions *bonâ fide* made to or for any public or charitable purpose, shall be deemed election expenses within the meaning of this act: Provided

also, that in any action to recover any penalty under this act it shall be lawful to the court in which such action shall be brought or any judge thereof, if they or he shall think fit, to order that the plaintiff in such action shall give security for costs, or that all proceedings therein shall be stayed.

XXV. Any candidate, and his agents by him appointed in writing, according to the provisions of this act, may, at any time before the day of nomination, pay any lawful and reasonable expenses in respect of the election which he or they shall *bonâ fide* believe fit and proper to be paid, in ready money, and the payment of which cannot conveniently be postponed: Provided that the candidate and his agents shall, on or before the day of nomination, make out, to the best of his ability, and deliver to the election auditor, a full, true, and particular account of all such payments, with the names of the persons to whom they have been made, signed by such candidate or his agents respectively, and no payment so made shall be a legal payment within this act unless such account thereof shall be duly rendered to the election auditor.

XXVI. The election auditor shall, as soon as he conveniently can, make out a full and true account of all the expenses incurred at the election, specifying therein every sum of money paid to him or paid by him or by his authority on behalf of each candidate, and of all sums claimed, although the same shall not have been allowed or paid, and every sum which has been paid into court as aforesaid or recovered by judgment against such candidate, and to whom by name, such payment was made, and for what particular debt or liability; and the election auditor shall include in such general account the amount of the sums paid by each candidate for advertisements, and he shall specify therein the total amount of expenses incurred by each candidate; and the account, when so made out, shall be duly signed by him: Provided always, that, if it shall be found necessary, the election auditor may from time to time make out a supplementary account or accounts, which shall be made and abstracted in the manner herein provided with reference to the first general account.

XXVII. The election auditor shall keep all accounts

Election auditor to keep accounts in some convenient place which shall be open to inspection. which shall come to his hands in some fit and convenient place, and shall, at all reasonable and convenient times, submit the same to the inspection of the candidates and their agents, and permit them to take copies of the same or of any part thereof, upon request, and when such general account as aforesaid shall be so made out and signed by him, he shall keep the same in some fit and convenient place; and such general accounts shall be open to the inspection of any person, and copies thereof or of any part thereof shall be furnished to any person at all reasonable and convenient times, upon request, such person paying a fee, at the rate of one shilling for every two hundred words, to a copying clerk, for the same; and when the election auditor shall have concluded the business of any election, he shall deliver over all accounts in his hands to the clerk of the peace in counties, and to the town clerk or other officer performing any of the duties of town clerk in cities and boroughs, and to the sheriff clerk in counties in *Scotland*, who shall allow them to be inspected by any person on the payment of one shilling, and shall furnish copies of the same or of any part thereof on the payment of a fee at the rate of one shilling for every two hundred words to the copying clerk, provided always, that for any copy so furnished the fee shall in no instance be less than one shilling, and shall deliver over to the candidates respectively the balance of all monies, if any, and all vouchers in his hands, except any vouchers appertaining personally to himself.

XXVIII. The election auditor shall also, as soon as he

Election auditor to publish abstract of such accounts. conveniently can, insert or cause to be inserted an abstract of such account, signed by him, in some newspaper published or circulating in the county or place where such election is held; and such abstract of account shall specify the amount of each of such bills, charges, or claims admitted to be correct, or claimed and objected to, and the names of the parties to whom the same shall have been paid or are due, or by whom the same have been claimed respectively.

XXIX. In case the person appointed to act as election auditor should, before his duties herein mentioned are completed, die, resign, or become incapable of acting as such election auditor, it shall be lawful for the returning officer for the time being to appoint some fit and proper person to act as such election auditor in the room of the person originally appointed as aforesaid for the remainder of the then current year of such appointment; and the returning officer shall give public notice of such appointment in the county, city, or borough.

XXX. All monies, bills, papers, and documents of and relating to the election which were in the hands or under the control of the election auditor going out of office, dying, resigning, or becoming incapable of acting, as aforesaid, except receipts or vouchers for payments actually made by such election auditor, shall be handed over and transferred to the new election auditor appointed as hereinbefore mentioned; and such new election auditor shall in all respects, or as near thereto as may be, have the same powers and act in the same way as if he had been originally appointed previous to the election: Provided always, that it shall be lawful for such new election auditor, at all reasonable times, to have access to and take copies of or extracts from the receipts or vouchers above excepted.

XXXI. Every candidate shall, before or at the nomination, or as soon after as conveniently may be, declare to the election auditor in writing the name or names of his agent or agents for election expenses, who shall be appointed in writing, and that he has not appointed and will not appoint any other agent without in like manner declaring the same to the election auditor, and no other than such agents shall have authority to expend any money or incur any expenses of or relating to the election, in the name or on the behalf of the candidate; and such agents may pay any of the current expenses of the election necessary to be paid in ready money, provided that such agents shall make out, to the best of their ability, and render from time to time, true and particular accounts to the election auditor of all such payments; and every such agent shall, as

soon as conveniently may be after his appointment as aforesaid, make and sign the following declaration :

" I [A. B.], being appointed an agent for election expenses by [X. Y.], a candidate at this election, do hereby solemnly and sincerely declare, that I have not knowingly made, authorized, or sanctioned, and that I will not knowingly make, authorize, or sanction, any payment on account of this election, otherwise than through the election auditor, save as excepted and allowed by 'The Corrupt Practices Prevention Act, 1854.' "

XXXII. In case any person shall be proposed and seconded at any election in his absence, and without his previous authority, it shall be lawful to the persons proposing and seconding such person to pay and agree to pay the lawful expenses of the election of such person ; and such proposer and seconder having agreed to pay such lawful expenses shall become liable to pay the fees hereby made payable to the election auditor, and pay any of the lawful expenses of such election, in like manner and upon the same terms and conditions as herein provided concerning agents for election expenses appointed in writing by the candidates.

XXXIII. If any candidate at any election, or any member of Parliament, hereafter returned to serve in Parliament, shall before the passing of this act have paid any money for or in respect of any election hereafter to be held, or any expenses thereof, such person shall, to the best of his ability, deliver a full, true, and particular account of such payment or payments to the election auditor.

XXXIV. Every such election auditor shall be paid and be entitled to receive, by way of remuneration for his services in and about the election, the sum of Ten Pounds from each candidate at the election, as and by way of First Fee ; and a further commission, at the rate of Two Pounds *per centum*, from each candidate upon every payment made by him for or in respect of any bill, charge, or claim sent in to such election auditor as hereinbefore provided ; and the reasonable expenses incurred by the election auditor in the business of the election and the performance of his duties pursuant to this act shall form part of the election expenses, and shall be paid rateably and proportionably by the candidates respectively.

CHAPTER XI.

THE PETITION.

THE election having been duly contested and the expenses duly paid, the next proceeding is the petition.

The causes which will avoid a return have been sufficiently stated as we passed through the various stages of the contest. All these objections are to be urged by petition to the House.

The act by which election petitions are now regulated is the 11th & 12th Vic. c. 98. Every petition complaining of an undue election, or return; or that no return has been made; or complaining of special matters contained in such return, is an election petition: provided it be signed by some person who voted, or had a right to vote; or by some person who claims to have a right to be returned, or elected; or who alleges himself to have been a candidate; and provided, moreover, that the petition be presented to the House, within the time limited by the House for receiving election petitions.

The time so limited is fixed by sessional orders passed at the commencement of each session. This sessional order runs—"That all persons, who will question any returns of members to serve in Parliament, for any county, city, borough, or place in the United Kingdom, do question the same within fourteen days next, and so within fourteen days next after any new return shall be brought in." If the House is

not sitting at the expiration of the fourteen days from the sessional order, or from the return, the petition must be presented on the first succeeding day the House meets for business.

This limitation of fourteen days from the return of the writ is of course not applicable to petitions based on corrupt acts done after the election. To meet these there is a specific order that "all persons who shall question any return of members to serve in the present Parliament upon any allegation of bribery and corruption, and who shall in their petition specifically allege any payment of money or other reward to have been made by any member or on his account, or with his privity, since the time of such return, in pursuance, or in furtherance of such bribery or corruption, may question the same at any time within twenty-eight days after the date of such payment; or, if this House be not sitting at the expiration of the said twenty-eight days, then within fourteen days after the day when the House shall next meet."

Before any election petition can be presented a recognizance must be entered into to the amount of 1000*l*. (which may be divided among any number of sureties, less than five) for the payment of all costs and expenses which the person signing the petition may become liable to pay to any witness, or to the party complained of, or to any party who may be admitted to defend.

This recognizance must mention the names and addresses of the sureties, with such other description as may make their identification easy; and must have annexed to it an affidavit

by each surety that he is possessed of property, above what will satisfy his debts, of the clear value of the sum for which he is bound.

The act gives the petitioner the alternative of paying money into the Bank of England to the account of the Speaker and the Examiner of Recognizances, and of producing a bank receipt for the money to the Examiner of the Recognizances instead of the recognizance.

The form of the recognizance is given by the act.

The recognizance and the affidavit may be taken before the examiner of recognizances or *any* justice.

Be it remembered, That on the — day of — in the year of our Lord 184 , before me, A. B., Esquire [Examiner of Recognizances for the House of Commons, or one of Her Majesty's justices of the peace for the — of — , came — and acknowledged himself [or severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of one thousand pounds [or the following sums, (that is to say), the said — the sum of —, the said — the sum of —, the said — the sum of —, and the said — the sum of —], to be levied on his [or their respective] goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is, that if [*here insert the names of all the petitioners, and, if more than one, add, or any of them*] shall well and truly pay all costs and expenses in respect of the election petition signed by him [or them] relating to the [*here insert the name of the borough, city, or county*] which shall become payable by the said petitioner [or petitioners] under the Election Petitions Act, 1848, to any witness summoned in his [or their] behalf, or the sitting member, or other party complained of in the said petition, or to any party who may be admitted to defend the same, as provided by the same act, then this recognizance to be void, otherwise to be of full force and effect.

Form of Affidavit.

I, *A. B.*, of the borough of Harwich, gentleman, do hereby make oath and say—

1. That I am the person bound in the sum of one thousand pounds by the hereunto annexed recognisance.

2. That I am seized and possessed of real and personal estate, above what will satisfy my debts, of the clear value of the sum for which I am bound by the said recognisance.

So help me God.

A. B.

Sworn before me, *C D.*, Esquire, Examiner of Recognizances for the House of Commons [or *E. F.*, Esquire, justice of the peace for &c.], by the said *A. B.*, at the time of entering into the hereunto-annexed recognizance, I being the same person by whom his recognizance was taken this — day of —, A.D. 1857.

No petition can be received unless the Examiner of Recognizances has certified by endorsement that the legal security has been given.

After presentation a petition may be at any time withdrawn upon payment of costs to the opposite party.

The petition will be addressed “to the Commons of the United Kingdom in Parliament assembled.” It should be signed by the petitioners themselves by their names or marks. It should show on the face of it that the petitioners have that interest in the election which gives them a right to petition; and it should state in general terms the matters of complaint against the sitting member.

Strict technical accuracy is not necessary in an election petition, but the statements should be sufficiently distinct to direct the attention of

the sitting member to the nature of the charge he has to meet.

We have seen that the seat may be attacked—

By any one who voted or had a right to vote.

By any person claiming to have a right to be returned.

By a person alleging himself to have been a candidate.

The seat may be defended by the sitting member petitioned against; or by electors admitted as parties to defend the return.

The decision of the examiner as to recognisances is final and conclusive, and the House, by accepting the petition and referring it to a select committee, cures all objections either to its style or signature. The time for inquiring into its regularity is before its reference to the Committee.

The petition may be in the following form.

Form of election petition.

To the Commons of the United Kingdom
in Parliament assembled—

The humble petition of — &c.

Showeth,

That the petitioners were, at and during the last election of a member to serve in this present Parliament for the borough of —, registered electors of the said borough, and had a right to vote, and did vote at the said election [or was a candidate to serve for the said borough in this present Parliament, and claims to have a right to be returned or elected at such election]. That at the said last general election for the borough of —, *A. B.*, Esquire, and *C. D.*, Esquire, [or

the petitioner], were candidates to represent the said borough in Parliament; that, a poll having been demanded, the same was taken by the returning officer for the said borough, on the thirtieth day of March one thousand eight hundred and fifty-seven; that the said *A. B.* was by the said returning officer declared to have had a majority of votes at the said election, and to have been duly elected, and was returned as the member duly elected to serve in this present Parliament for the said borough.

That many persons subject to legal incapacities, and disqualified by receipt of alms or parochial relief did vote in favour of the said *A. B.*

That many persons who became disqualified subsequently to the formation of the register by the receipt of bribes, or promises of money or bribes, in giving their votes at the said election, or by otherwise being guilty of bribery under the definitions contained in the "Corrupt Practices Prevention Act, 1854," or by receiving of alms or parochial relief, or by having parted with the property in respect of which they were qualified, or by removal of their occupation or residence, or otherwise, did vote at the said election in favour of the said *A. B.*

That by reason of the premises the said *A. B.* obtained an apparent and colourable majority of votes over the said *C. D.* [*or over the petitioner*].

That the said *A. B.* was, by himself and his agents, guilty of bribery within the scope and meaning of the "Corrupt Practices Prevention Act, 1854," in, among others, the instances fol-

lowing, that is to say (insert the instances capable of proof).

That the said *A. B.* was, by himself and agents, also guilty of treating within the scope and meaning of the said last-mentioned act in the instances following, that is to say (insert instances).

That of all, or of some of such acts of bribery and treating, the electors who voted for the said *A. B.* had notice, and they were informed that the said *A. B.* had thereby become disqualified to be elected.

Your Petitioners therefore pray that your Honourable House will take the premises into consideration, and declare that the said *C. D.* [*or the petitioner*] was duly elected, and ought to have been returned to serve in this present Parliament for the said borough, and direct the Clerk of the Crown to erase the name of the said *A. B.* from the said return and insert therein the name of the said *C. D.* [*or of the petitioner*], or otherwise to declare the said election and return of the said *A. B.* to be wholly void.

And your Petitioners will ever pray, &c.

The petition, the recognizances having been found sufficient, and the endorsement of the examiner being regular, is referred by the House to the General Committee of Elections.

On the day after the time allowed for receiving election petitions the Speaker appoints six members to form this General Committee. The General Committee select from the list of members liable to serve six, eight, ten, or twelve

members to serve as chairmen of Election Committees, the remaining members are by the same Committee divided into five panels of, as nearly as may be, equal numbers. These panels are numbered for order of their work according to lot, the Clerk of the House drawing the lots. The General Committee then classes the petitions and chooses from the panels the members.

Fourteen days' notice is given of the choosing the Committee. The General Committee then choose four members from the panel next in order for service. The Chairman's panel selects a chairman. The General Committee call in the parties and read over the names. If objections are made and substantiated, a new Committee is named. If there is no objection the tribunal is formed.

There is one more chance of escape. Notice is given to the members chosen, and an appointment made for the following day. If within a quarter of an hour of the time named he appear, and show that the tribunal would not be impartial if he were upon it, a new Committee is chosen. If not, then the Committee is fixed; the names are reported to the House, and the members are sworn "well and truly to try the matter of the petitions referred to them, and a true judgment give according to the evidence."

At the first meeting resolutions, which are ordinarily in the following form, are read by the Chairman—

1. "That counsel will not be allowed to go into matters not referred to in their opening

statement, without a special application to the Committee for permission to do so.

2. "That if costs be demanded by either party, under the 11th & 12th Vic. c. 98., the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.

3. "That the Committee expect that with respect to cases of bribery, which it is intended to bring home to the sitting member, or his agents, the counsel for the petitioners will now state the names of the electors bribed, and those of the persons who actually gave the bribes.

4. "The Committee, however, reserve to themselves a power under the special application of counsel, to proceed with any case which tends to inculcate any principal, or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognizant.

5. "That with respect to treating, the Committee will expect counsel to state the times and places where such treating is alleged to have taken place. The Committee, however, reserving to themselves a discretionary power, as in cases of bribery.

6. "That no person shall be examined as a witness who shall have been in the room during any of the proceedings, with the exception of the agents, whose names shall be handed in, without special leave of the Committee."

It is not the intention of this little manual to treat at any length of the proceedings before the

Election Committee. The slight sketch that has been given has for its object to draw attention of the agent during the progress of the contest to the points that will be of after importance. The resolutions just quoted shew that the case ought to be thoroughly prepared before the proceedings commence.

The Committee having tried the case, decide—

1. Who was duly elected, and who is duly or ought to have been returned.
2. Whether the election was good or void.
3. Whether a new writ should issue.

The decision is reported to the House, and entered on the journals. The House then does the formal acts necessary to give practical effect to the decision.

The case is now closed, unless the report of the committee should lead the House to direct a prosecution against some person implicated in the proceedings; or unless the conduct of the constituency should have been so bad that the precedents of Sudbury and St. Alban's should be followed. In the latter case a commission will issue under the "Act to provide for more effectual inquiry into the existence of corrupt practices at elections for members to serve in Parliament" (15 & 16 Vic. c. 57.), and upon those proceedings a Disenfranchising Act will be based. Into this, however, I do not enter.

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